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OVERSIGHT ON THE TAFT-HARTLEY ACT, THE RAILWAY LABOR ACT, AND THE NATIONAL LABOR RELATIONS ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

EXAMINING THE PROBLEMS THAT HAVE COME TO LIGHT DURING THE PAST SEVERAL YEARS THAT HAVE A DETRIMENTAL IMPACT ON THOUSANDS OF CONSCIENTIOUS WORKING MEN AND WOMEN ACROSS THE COUNTRY

SEPTEMBER 13 AND 18, 1984

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CONTENTS

STATEMENTS

Thursday, September 13, 1984

Page
Cole, Galen L., chairman of the board, Coles Express 139
  Prepared statement 144
Cranston, Hon. Alan, a U.S. Senator from the State of California, prepared statement 218
Fuentealba, Victor W., president, American Federation of Musicians; Ned H. Gutheri, president emeritus, Local 136; and Cosimo Abato, Esq., American Federation of Musicians 7
  Prepared statement 10
Gutheri, Ned H., president emeritus, Local 136, American Federation of Musicians, prepared statement (with attachments) 36
Hair, Raymond Marshall, Jr., prepared statement (with attachments) 225
Phillips, Erle, Esq., and Richard L. Wyatt, Esq., Fisher & Phillips, on behalf of Continental Airlines, Inc 149
  Prepared statement, joint 155
Price, Robert J., General Dynamics 120
  Prepared statement 126
Randolph, Hon. Jennings, a U.S. Senator from the State of West Virginia, prepared statement 6
Schmidt, Godfrey P., Esq., National Association of Orchestra Leaders, accompanied by Charles Peterson, secretary-treasurer, and Jerry Davis 59
Takacs, A. J., vice president, government and public affairs, Whirlpool Corp., accompanied by Robert Bartley, division vice president 102
  Prepared statement (with attachments) 106

Tuesday, September 18, 1984

Actors Equity Association, Alan Eisenberg, executive secretary, prepared statement 560
American Hotel & Motel Association, prepared statement 587
Board of Directors of the International Theatrical Agencies Association, prepared statement 531
Golodner, Jack, director, Department for Professional Employees, AFL–CIO, prepared statement 535
Havas, Steve, Glenfield, NY, prepared statement 426
Heaberlin, William A., representing International Theatrical Agencies Association, prepared statement 526
Hurly, John, Deale, MD, prepared statement 431
Irving, John S., Kirkland & Ellis, prepared statement 541
Larson, Reed E., president, National Right to Work Committee, Springfield, VA; Steve Havas, Glenfield, NY, and John Hurley, Deale, MD 408
  Prepared statement 411
Lee, Thomas, prepared statement 562
Price, Robert J., prepared statement 572
Russell, Laurence G., special agent/police officer, Santa Fe Railroad, Amarillo, TX accompanied by Robert Gore, counsel 466
  Prepared statement (with attachments) 471
Schnapp, Roger H., Esq., representing Jet America Airlines, Costa Mesa, CA 502
  Prepared statement (with attachments) 505
Symms, Hon. Steven D., a U.S. Senator from the State of Idaho 321

Page
Symms, Hon. Steven D., a U.S. Senator from the State of Idaho—Continued
    Prepared statement (with attachments) 328
Willingham, Gene, Ardmore, OK 438
    Prepared statement (with attachments) 441
Wisconsin Orchestra Leaders Association, prepered statement 567

ADDITIONAL MATERIAL

Articles, publications, etc.:
    UAW's response to testimony of Robert Price 219
    U.S. Court of Appeals decisions regarding employers of musicians 62
Questions and answers:
    Responses of the American Federation of Musicians to questions submitted by Senator Randolph 21

OVERSIGHT ON THE TAFT-HARTLEY ACT, THE RAILWAY LABOR ACT, AND THE NATIONAL LABOR RELATIONS ACT

THURSDAY, SEPTEMBER 13, 1984

U.S. Senate,
Committee on Labor and Human Resources,
Subcommittee on Labor,
Washington, DC.

The subcommittee met at 9:38 a.m., in room SD-430, Dirksen Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senators Nickles and Randolph.

OPENING STATEMENT OF SENATOR NICKLES

Senator Nickles. Good morning.

Today's hearing, and the one scheduled next week, will focus on the Taft-Hartley Act, the National Labor Relations Act, and also the Railway Labor Act, specifically on problems which have come to light during the past several years that have had a detrimental impact on thousands of conscientious working men and women across the country.

During the past few weeks, a steady drumbeat of unsubstantiated and politically motivated attacks have rained down on the National Labor Relations Board, particularly on three Board members appointed by President Reagan.

One must ask, "Why the vicious attacks?" We are well aware that the current NLRB members have not been the only target. The Reagan administration gets its share of antilabor demagoguery, and even the courts are being tagged with antilabor sentiment because of recent decisions. It seems that everybody and every institution is being held responsible for organized labor's decline, particularly in membership and clout.

These hearings have been called to focus on real life situations around the country that typify the problems of some members of organized labor.

The witnesses testifying today and next week will also have a long history of union involvement. Their stories are representative, unfortunately, of the state of labor-management relations today, and I should add that we have deliberately stayed away from presenting sensationalized cases involving violence and racketeering.

Every case scheduled for discussion has apparently occurred within the law, and there are no allegations of illegal conduct. However, it will be clear to anyone who listens to the testimony that the final result of many labor-management disputes are frequently irrational. Many workers, union workers, are hurt economically by these practices.

The practices in question are, by definition, legal under the Taft-Hartley Act and Railway Labor Act. The Taft-Hartley Act was enacted by Congress in 1947 to cut down on labor strife which prevailed after the Second World War.

The Railway Labor Act predates the Taft-Hartley Act by some 20 years, and was also designed to facilitate labor-management cooperation. Yet I believe, and the testimony before this subcommittee will demonstrate, that the problems that have recently developed under both laws should be studied in greater detail by Congress and by the labor-management community to determine whether Congress' intent is actually being frustrated by these practices.

This subcommittee will hear from labor union members, former members and management about how the average working man and woman are the ones taking the beating. Because the attention in Washington has focused on the so-called political problems that each side has had with the other, the union members themselves seem to have been forgotten in the fray. This hearing will focus on them.

Also, today we have scheduled two witnesses on Senator Randolph's bill, S. 281, a bill amending the Taft-Hartley Act that changes the nature of employment relationships in the recording arts industry.

I am very pleased that Senator Randolph has joined us this morning. He has a very busy agenda in the Environment Committee today, and so to accommodate the demands on his time, we will ask his two witnesses to open the meeting this morning.

Senator Randolph, I am pleased that you have joined us at this early hour. You are always attentive and here, and I compliment you for that. I think it is a real tribute to your leadership in the Senate for these many years, and certainly one I will miss.

Do you have an opening statement?

Senator RANDOLPH. Perhaps, Mr. Chairman, the statement that I make will be brief, but I would ask the privilege of including in the record the full text of my opening remarks. I just feel the time element is too difficult.

Senator NICKLES. Certainly.

Senator RANDOLPH. I am grateful to join you, Mr. Chairman, and those that are here at the table at the present time.

I do want to ask that they identify themselves even before my statement, if that would be agreeable.

Senator NICKLES. That would be very agreeable with this Senator.

Would you care to identify yourselves?

Mr. Fuentealba, the president of the American Federation of Musicians.

To my right is our general counsel, Cosimo Abato, and to my left is our legislative director, Ned Guthrie.

Senator NICKLES. Thank you.

Senator RANDOLPH. Now, I might start by saying Ned Guthrie is a West Virginian: You may not realize, even though there may be disagreements politically in West Virginia between the two major parties, there is a camaraderie between the mountain people, just as there are those closely knit friendships in your State. I often say, facetiously perhaps, but it is true, that the only way the gushers, oil and gas, were ever brought out of the Earth in Oklahoma was because West Virginians who had been in this business so much earlier, came out and actually drilled those wells all over Oklahoma. Oil and gas development have added to the economy, and I am sure have benefited the State of Oklahoma and its people from the standpoint of an improved situation.

We were thinking just a moment ago about the fact that in 1947, the Taft-Hartley Act became law, and I was not here at that time. I always like the record to be accurate. I was defeated in 1946 for reelection to the House of Representatives, and in 1946, I was serving my last year of the seven terms, 14 years, in that body. So I was not here when Taft-Hartley became law. But I was here and participated actively in the Railway Labor Act and its passage, and at that time, which was 1935, I remember the debates and the activities. Only the record may indicate further my commitment to the concerns of labor and to simply reinforce my concerns with them, as well as other Members of the Congress—Senate and House.

I want to say, Mr. Chairman, that I have been in the House and the Senate for 40 years, 14 years in the House and 1984 is my 26th year in the Senate, although it is 51 years from the beginning of my service or at least my work here on Capitol Hill. I am very appreciative that you in your generosity would allow us to proceed now so that I could go to the Committee on Environment and Public Works in just a few moments.

Senator NICKLES. Certainly. We are happy to do that.

Senator RANDOLPH. I commend the leadership in scheduling these oversight hearings on the Taft-Hartley Act and the Railway Labor Act. There are many subjects, of course, which are before this committee that are very, very important, and none of them has an importance beyond the one we are discussing today because of the people issue and we want to review certain labor laws that from time to time are amended, but basically these laws have remained intact as they were.

I know that as we join together today for this hearing, we must realize that in the final analysis whatever we do or do not do, it concerns people. We can talk with a judge on the Supreme Court, a Member of the Senate, yourself from Oklahoma, any of the House Members from West Virginia, but whatever we do in the system of Government—legislative, executive and judicial we consider at the basis of each and every law, whether passage or defeat of law, we concern ourselves with the law for the people. The same applies with the administrative part of our Government. What they do, they are doing for the people. The same way with the court; people, people, people are the center of what we do, and we must never forget that.

Therefore, in legislative matters, we have tried not to pass over something quickly. Even I, as chairman of the Committee on Environment and Public Works for 14½ years, originally the Public Works Committee, under the reorganization of 1977 it became Environment and Public Works, I realize that our concerns were with people.

So people, people. I have to reemphasize it, and as we join today, what we are talking about are those matters which concern and affect people.

I think we will learn today, since this is a learning process, about what some of us believe are necessary revisions to correct injustices that may be compelling.

The original Wagner Labor Act, I remember that so well, was passed in 1935. By the way, I want to jump back for just a moment. In 1933, March 9, we had come into session. In those days the President took his oath of office on March 4. The House came in on March 9. Today everyone comes in at the same time, but I remember what we did at that time. We passed the Emergency Banking Act after we had selected the officers of the House, Speaker Raymond from Illinois.

There are times when we cannot afford a leisurely decision on important matters affecting people. I am not saying that we should always hasten, but Franklin Roosevelt had closed all of the banks of this country on March 6. There were those who condemned his action, said that he had no right to do what he did, but he did it March 6, and then the President, through his own leadership, working with the Congress which was just coming in, we immediately passed the Emergency Banking Act, I repeat, and Mr. Chairman, we passed it without a dissenting vote, Democrats and Republicans without a dissenting vote.

From that experience with the President, as I have studied his life and only in reflection, I want the record to show that President Franklin Roosevelt often used unorthodox methods, but he always preserved orthodox institutions. If you study his record, you will know the truth of that statement.

So to go back to that time, the Nation was in a condition where we were on our knees. We were prone, people by people, in this country, and we had to act quickly in those days.

I remember so very well late in March 1933. I was one of seven Members of the House invited by the President to discuss certain problems, and he was doing that many times during the day with new Members who had been elected, as he had been elected, in November of 1932. That night, I take you back in vivid memory. We were taken to the second floor of the White House. It was a cold, rainy, dreary, March evening in the city. The President was sitting behind the large desk. We were privileged to shake his hand, the seven of us. The chairs were in a semicircle.

I shall never forget the words of the President:

> You know, I would like to have this a very pleasant evening, to start off with perhaps telling some stories, but, gentlemen, we have to consider at once serious matters affecting this country and its possible future, even some would say its very fabric torn apart.

So he talked about the problems, what he felt we must do, not in 100 days. He did not use that term, but about the necessity for action.

A dear friend of mine from the Middle West, now gone from the Earth, asked the President if he could comment, and, of course, he was given that privilege. He said:

> Mr. President, I am for your programs and your projects, at least most of them. But you are trying to do too much too quickly, and the people cannot digest these programs. They cannot absorb them. For that reason, I think that much of what you are trying to do, or at least a portion, will fail.

I shall never forget the President. He looked at us, and he said not to the one person, but to the seven of us: "But, gentlemen, do you realize we must act now?"

By acting now, I remember this word for all time, we will assuredly make mistakes, but if we do not act now, I am afraid just a little later we may not be given even the opportunity to make the mistakes.

Few people in this room or in Washington, if you asked them who were the candidates for President in 1932, very quickly they would tell you that Herbert Hoover was acting in that campaign as one President who wished to be selected for another term, and Franklin Roosevelt, from the other party, was aspiring to that office.

But there was another candidate, representing the Communist Party of the United States, in that election of 1932, Mr. Chairman, the candidate being Gus Hall.

So there are, as I indicated, these basic labor statutes, and for the most part, they have weathered the test of time, and have done it rather well. But circumstances change, and that is why I was talking about the circumstances in 1933, and perhaps our understanding of work experiences change also. We know that that has happened.

Now there is a need, we believe, for certain modifications of the Taft-Hartley Act which more accurately address the problems of workers and certainly of management.

One situation which has been a concern of mine is the plight of musicians and other performing artists who, because of the unique temporary nature of their work experiences, have been denied the opportunity to engage in collective bargaining.

Of course, collective bargaining, born of the New Deal, gave labor the right to bargain collectively with ownership or management, and as we think of the workers, we think of the employers. They are all people.

I have introduced, Mr. Chairman, Senate 281, the performing arts labor relations amendments, which we believe will provide to musicians and others the same basic right given to workers generally under these labor laws that I mention. The history of the current problems facing the musicians originated, I believe, in 1968 when the National Labor Relations Board began to assert jurisdiction over musicians. The NLRB no longer classified musicians as employees, but as independent contractors and the purchasers of musical services, or management, were classified as nonneutral rather than employers.

The effect of the NLRB interpretation of the law has been to deny to musicians the opportunity to engage in collective bargaining through their union representatives, and this is something that is of concern.

The bill I introduced, Senate 281, will correct this injustice, and I call it a reasonable matter by classifying the employers under the act for labor law purposes.

I will ask again for permission to have the record complete.

Senator NICKLES. Certainly. Your entire statement will be in the record.

Senator RANDOLPH. So one might ask or many might ask: Why were the musicians not included in 1959 amendments to Taft-Hartley? I shall say that in 1959, they did not know they had any problems, and that was until the late 1960's, when the NLRB exercised jurisdiction over musicians.

I am gratified, Mr. Chairman, for the extra time that you have given to me and the time that will be used by those who support my measure. Ned, I come back to you and I say I am always glad to work with you when I can.

These gentlemen who you are with this morning, who have been introduced in this hearing, they have a position. They would like to advise you, Mr. Chairman, and others of the committee not present for the reading of the record later, about what we think is a desperate situation that faces musicians and describe in more detail the need for immediate relief.

So you have been very kind to arrange the hearing, and especially you have been overly kind for allowing me to recall the earlier days of legislation.

That legislation, with very few changes, and I do not want to talk more about the New Deal, but if you study the New Deal laws, most of them are still on the books.

I thank you.

[The prepared statement of Senator Randolph follows:]

PREPARED STATEMENT OF SENATOR RANDOLPH

Mr. Chairman, I commend your leadership in scheduling these oversight hearings on the Taft-Hartley Act and the Railway Labor Act. There are many subjects which come before this Subcommittee, but none are as important to working people as a review of labor laws. I know that you join me in a desire to examine how the laws are affecting people and how expeditiously the National Labor Relations Board is handling the cases that have developed. Hopefully, we will learn what revisions are needed to correct injustices.

The original Wagner Act of 1935, the Taft-Hartley Act of 1947, and the 1959 changes known as the Labor-Management Reporting and Disclosure Act, are basic labor statutes and for the most part have weathered the test of time rather well. But circumstances change and perhaps our understanding of work experiences change and we find a need for modifications which more accurately address the problems of workers and management.

One situation which has been brought to my attention is the plight of musicians and other performing artists who because of the unique temporary nature of their work experiences have been denied the opportunity to engage in collective bargaining with their employers. I have introduced legislation, S. 281, the Performing Arts Labor Relations Amendments, which will provide to musicians and others the same basic rights given to other workers under our labor laws.

The history of the current problems facing musicians originated in 1968 when the National Labor Relations Board began to assert jurisdiction over musicians. The NLRB no longer classified musicians as employees, but as independent contractors, and the purchasers of musical services or management were classified as non-neutral, rather than employers. The effect of NLRB interpretation of the law has been to deny musicians the opportunity to engage in collective bargaining through their union representatives. My bill, S. 281, will correct this injustice in a reasonable manner, by clarifying employers under the Act for labor law purposes.

I recall that in 1959 the Congress enacted several amendments to our labor laws which has developed over several years. One of those amendments addressed the particular needs of the building and construction industry whose workers are engaged in short-term jobs by reducing from 30 days to 7 the grace period before which an employee may be required to join a union. The 1959 amendment also provided that it is not an unfair labor practice for an employer primarily engaged in the building and construction trades to enter into agreements with labor organizations of which the employees are members. It was determined that representation elections in a large segment of the industry were not feasible due to short periods of actual employment by specific employers.

The so-called building and construction industry amendment of 1959 should be applied to other short-term workers, and that is what my bill would do for musicians. One might ask why the musicians were not included in the 1959 amendments, and the answer is simple, they did not know they had any problems until the late 1960's when the NLRB began to exercise jurisdiction over musicians.

I am pleased, Mr. Chairman, that among our witnesses will be Mr. Victor Fuentealba, President of the American Federation of Musicians and his National Legislative Director, Mr. Ned Guthrie, from my home State of West Virginia. They are in a position to advise the members of the Committee about the desperate situation facing musicians and describe in more detail the need for immediate relief. I appreciate your courtesy in arranging their testimony today.

Senator NICKLES. Thank you, Senator Randolph. It is interesting to hear you talk about the banking bill. We have been debating a week and a half on mostly a motion to proceed. So things have not gone quite so swiftly in the past several years.

We have a total of six different panelists and some have early flight connections they would like to make. If all the panelists would summarize your comments, if possible, we will include your entire statement into the record.

STATEMENTS OF VICTOR W. FUENTEALBA, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS; NED H. GUTHRIE, PRESIDENT EMERITUS, LOCAL 136; AND COSIMO ABATO, ESQ., AMERICAN FEDERATION OF MUSICIANS

Mr. FUENTEALBA. Thank you, Mr. Chairman.

On behalf of the entire membership of the American Federation of Musicians, the largest entertainment union in the world, which was founded in 1896, I want to thank you and the committee for giving me the opportunity to appear before you today to explain the importance of Senate 281 to the professional musicians throughout our country.

Our union has represented professional musicians since 1896, and during its lengthy history, we have been faced with many challenges and threats to job opportunities and have survived. Technological developments, starting with the introduction of the sound track in motion pictures, the phonograph record which is now providing all of the music on radio and in many establishments, and devices that duplicate the sounds of musical instruments are examples of the myriad of problems that have faced the professional musician and which will continue to do so in future years.

Despite those challenges, we have been successful in our continual efforts to create and preserve work for American musicians. However, one of the most serious problems threatening the music industry today can only be resolved by you and your colleagues.

I am referring, of course, to the present labor law and its application by the National Labor Relations Board and the courts to the music industry. Let me give you just one example. From the day that the hotels and casinos were opened in Puerto Rico, the musicians working in those establishments, providing music for dancing and shows, were considered employees of the hotels.

Our local affiliate in Puerto Rico capably represented the interests of those musicians by negotiating and enforcing contracts for their services. I am certain that there is not an individual who has ever visited one of those hotels who did not presume that the musicians were employees of the hotel.

However, in 1979, the hotels decided that they no longer wished to be burdened with the responsibilities of an employer and took the position that they did not have to negotiate with the union on the basis that the musicians were not employees of the hotel.

Despite the long history of the employer-employee relationship and the many previous contracts that had been negotiated between the hotels and the union, the second circuit court of appeals agreed with the hotels and ruled that the musicians were not employees of the hotels.

The union could no longer compel the hotels to sit down at the bargaining table and negotiate an agreement, and the musicians were left with no alternative but to accept whatever wage proposals were offered to them individually by the orchestra leader or look for other employment.

Pension contributions that were formerly made by the hotels immediately stopped. Unemployment compensation coverage and workmen's compensation protection stopped, and the musicians were left to fend for themselves.

Multiply this example by the tens of thousands of nightclubs, hotels, lounges, and other establishments using musicians throughout the United States, and you can readily understand our need for relief. Musicians today, with the exception of the members of our major symphony orchestras, some theaters and a few other areas of the industry where the employer-employee relationship is recognized, are in a "no man's land" as far as the labor laws are concerned. They constantly plead for the protection of our union and for assistance in resolving their problems with purchasers, and we are unable to help them.

The amendments which we are seeking have not been arbitrarily chosen, but are based on the bitter experiences of thousands of musicians since the adoption of the Taft-Hartley Act. The amendments that we are requesting could have probably been incorporated into the original legislation in 1947 or when amendments were adopted in 1959 were it not for the fact that at those times, the law had not been applied to the music industry, and there were no adverse rulings or decisions.

Our problems began years later and culminated in hundreds of unfair labor practice charges in the late 1970's.

The music industry is a unique business, and the ambitions of every young musician to become a star are marred by unscrupulous promoters, managers, agents, nightclub owners, and others seeking to exploit the musician.

The American Federation of Musicians is the only organization whose sole purpose in existing is to protect musicians from exploitation and to improve their financial welfare and professional careers. The present law not only prevents our union from protecting its members, but offers no suitable alternatives.

The nightclub owner determines what compensation the musicians will receive, what hours they will work, when they will take their intermissions, what songs they will play, what they will wear, and occasionally with whom they will associate when off the bandstand. Yet, under the present law, that same nightclub owner who has such complete control over the services of the musicians and their welfare is immune from any action on the part of the union to protect the musicians because he is not recognized as the employer of the band.

Our only remedy is to amend the Taft-Hartley Act as we have requested. Music is the universal language, and there is not a family today without at least one member who plays a musical instrument. The caliber of musicianship is improving day by day and more and more youngsters are looking forward to careers in music.

Our ability to protect their interest, to protect their exploitation and to enable them to earn a decent livelihood is hampered by the current law. The relief we are seeking is not a major revision of the Taft-Hartley Act, but merely changes which will afford the professional musician the right to have a representative of his or her choosing to negotiate with those who wish to utilize their services.

I do not feel that the drafters and proponents of the present law ever envisioned or intended that law to discriminate against musicians, and, gentlemen, that is what is happening today.

In the past Congress has seen fit to make changes in the law when it was proven that those changes were necessary to protect the workers in a particular industry. In 1959, after listening to the pleas of the construction and garment industries, Congress realized that certain amendments to the Taft-Hartley Act were the only solution to the unique problems of those industries, and today we are here seeking similar relief for our industry.

The musicians need protection also, and the musicians need the changes which we are requesting. I sincerely urge your support of Senate 281.

Thank you.

[The prepared statement of Mr. Fuentealba, and responses of the American Federation of Musicians to questions submitted by Senator Randolph follow:]

STATEMENT OF VICTOR W. FUENTEALBA, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS

Mr. Chairman, members of the Subcommittee, my name is Victor W. Fuentealba and I am International President of the American Federation of Musicians, the largest entertainment union in the world.

First of all, I want to thank you and the Committee for giving me the opportunity to appear before you today to explain the importance of S.281 to the professional musicians throughout our country. Our union has represented professional musicians since 1896 and during its lengthy history, we have been faced with many challenges and threats to job opportunities and have survived. Technological developments, starting with the introduction of the sound track in motion pictures, the phonograph record which is now providing all of the music on radio and in many establishments, and devices that duplicate the sounds of musical instruments are examples of the myriad of problems that have faced the professional musician and which will continue to do so in future years. Despite those challenges, we have been successful in our continual efforts to create and preserve work for American musicians. However, one of the most serious problems threatening the music industry today can only be resolved by you and your colleagues. I am referring of course to the present labor law and its application by the National Labor Relations Board and the courts to the music industry.

Let me give you just one example. From the day that the hotels and casinos were opened in Puerto Rico, the musicians working in those establishments providing music for dancing and shows were considered employees of the hotel. Our local affiliate in Puerto Rico capably represented the interests of those musicians by negotiating and enforcing contracts for their services. I am certain that there isn't an individual who has ever visited one of those hotels who did not presume that the musicians were employees of the hotel. However, in 1979, the hotels decided that they no longer wished to be burdened with the responsibilities of an employer and took the position that they did not have to negotiate with the union on the basis that the musicians were not employees of the hotel. Despite the long history of the employer-employee relationship and the many previous contracts that had been negotiated between the hotels and the union, the Second Circuit Court of Appeals agreed with the hotels and ruled that the musicians were not employees of the hotels. The union could no longer compel the hotels to sit down at the bargaining table and negotiate an agreement and the musicians were left with no alternative but to accept whatever wage proposals were offered to them individually by the orchestra leader or look for other employment. Pension contributions that were formerly made by the hotels immediately stopped. Unemployment compensation coverage and workmen's compensation protection stopped and the musicians were left to fend for themselves.

Multiply this example by the tens of thousands of nightclubs, hotels, lounges, and other establishments using musicians throughout the United States and you can readily understand our need for relief. Musicians today, with the exception of the members of our major symphony orchestras, some theatres, and a few other areas of the industry where the employer-employee relationship is recognized, are in a "no man's land" as far as the labor laws are concerned. They constantly plea for the protection of our union and for assistance in resolving their problems with purchasers and we are unable to help them.

The amendments which we are seeking have not been arbitrarily chosen but are based on the bitter experiences of thousands of musicians since the adoption of the Taft-Hartley Act. The amendments that we are requesting could have probably been incorporated into the original legislation in 1947 or when amendments were adopted in 1959 were it not for the fact that at those times the law had not been applied to the music industry and there were no adverse rulings or decisions. Our problems began years later and culminated in hundreds of unfair labor practice charges in the late 1970's.

The music industry is a unique business and the ambitions of every young musician to become a star are marred by unscrupulous promoters, managers, agents, nightclub owners and others seeking to exploit the musician. The American Federation of Musicians is the only organization whose sole purpose in existing is to protect musicians from exploitation and to improve their financial welfare and professional careers. The present law not only prevents our union from protecting its members, but offers no suitable alternatives. The nightclub owner determines what compensation the musicians will receive, what hours they will work, when they will take their intermissions, what songs they will play, what they will wear, and occasionally, with whom they will associate when off the bandstand. Yet, under the present law, that same nightclub owner who has such complete control over the services of the musicians and their welfare is immune from any action on the part of the union to protect the musicians because he is not recognized as the employer of the band. Our only remedy is to amend the Taft-Hartley Act as we have requested.

Music is the universal language and there is not a family today without at least one member who plays a musical instrument. The caliber of musicianship is improving day by day and more and more youngsters are looking forward to careers in music. Our ability to protect their interests, to prevent their exploitation and to enable them to earn a decent livelihood is hampered by the current law. The relief we are seeking is not a major revision of the Taft-Hartley Act, but merely changes which will afford the professional musician the right to have a representative of his or her choosing to negotiate with those who wish to utilize their services. I do not feel that the drafters and proponents of the present law ever envisioned or intended that law to discriminate against musicians, but gentlemen, that is what is happening today.

In the past, Congress has seen fit to make changes in the law when it was proven that those changes were necessary to protect the workers in a particular industry. In 1959, after listening to the pleas of the construction and garment industries, Congress realized that certain amendments to the Taft-Hartley Act were the only solution to the unique problems of those industries, and today we are here seeking similar relief for our industry. The musicians need protection also and the musicians need the changes which we are requesting. I urge your support of S.281.

EXPLANATION OF BACKGROUND AND OBJECTIVES OF S.281

(i)

Legislative Background

In 1959, Congress enacted a number of amendments to the Labor Management Relations Act of 1947 (or the "LMRA") in recognition of certain unique characteristics of the Building and Construction Industry and the Garment and Apparel Industry. Those amendments, which now are included in Sections 8(e) and 8(f) of the LMRA and are codified at 29 U.S.C. Sections 158(e) and 158(f), addressed specific problems that had arisen in the application of the Act to the Building and Apparel Industries since it was passed in 1947.

In adopting the 1959 amendments to the LMRA, Congress recognized that all industries are not equally affected by the Act, nor equally benefitted by its terms. In particular, the draftsmen of the 1959 amendments recognized the extremely temporal nature of employment within the construction industry. The Committee reports in both the Senate and House pointed out that "the vast majority of building projects are of relatively short duration". Senate Report No. 187, at p. 28, and House Report No. 741, at p. 19. Thus, the Committees of both Houses of Congress concluded that a pre-hire collective bargaining agreement, entered into even before a job has begun, was a socially acceptable self-regulative mechanism, even though the practice of making such agreements was "not entirely consistent with Wagner Act rulings of the NLRB." Indeed, the two Committees found that such agreements assisted employers in estimating labor costs before bidding on jobs, enabled employers to secure a reliable labor pool and stabilized labor-management relations in the industry. See Senate Report No. 187, at p. 28, and House Report No. 741, at p. 19.

The problem facing Congress with regard to the construction trades perhaps was best summarized by remarks which Senator Javits made on the floor of the Senate on April 21, 1959, when he said:

> "We cannot apply the Taft-Hartley law to the building and construction field. We all know the law is not being applied in that field and we might as well recognize the fact in the law. This is an essential amendment and the sooner we adopt it the better."

Congressional Record, 86th Congress, 1st Session, at p 5731.

Section 8(f) of the LMRA was passed, therefore, in order to place the building trades unions on an equal footing with unions in other industries in which employment is of a more permanent nature. See, Congressional Record, 86th Congress, 1st Session, at p. 14204. See, also, House Report No. 1147 at pp. 41-42. It sanctioned a standing industry practice which, while arguably prohibited by the LMRA, had been employed by labor and management to stabilize employment relationships in the building trades and to set prevailing work standards and wages.

In the case of the Garment and Apparel Industry, the object of the Congress in drafting a special proviso in Section 8(e) of the LMRA was much the same. Congress sought to retard the proliferation of small job shops that were set up to avoid union contracts and, thus, undermined union work standards and union wage scales. See, Congressional Record, 86th Congress, 1st Session at p. 15952.

That object was succinctly described by Representative Halpern as follows:

> "Of all the industries in the Nation, the Garment Industry was one of the most susceptible to employer evasions of agreements. It was particularly difficult for unions to police competition from sweat shops because employers hired jobs out to hidden lofts and received back the finished work product before the unions could catch up with them.
>
> ". . . Consequently low wages and terrible working conditions at one time characterized the industry.
>
> "The conference report language exempting the Garment Industry from the intradiction against coercing an employer from handling the products of another or from doing business with another is a welcome one indeed. The garment unions can continue to make agreements with jobbers not to contract out work to subcontractors using nonunion labor."

Congressional Record, 86th Congress, 1st Session at pp. 16651-16652.

(ii)

Description of the Music Industry

The music industry is likewise unique in several respects and shares with the Garment and Construction Industries characteristics that put some of its longstanding practices in direct conflict with provisions of the LMRA. Musicians, like construction workers, usually enjoy only short term employment with particular employers. They, like their counterparts in the building trades, move from job to job with little hope of sustained work security with any one employer. Indeed, many professional musicians are forced to practice their profession in a nomadic fashion, traveling from city to city, working no more than a week or two at any one location, in night clubs, restaurants, and hotels across the country.

Because of the casual employment relationship into which traveling musicians are forced, they cannot enjoy the benfits of collective bargaining or association. For the most part they are compelled to strike their own bargain with little leverage as to the terms and conditions of employment under which they are employed. While many musicians were treated in the past as "house" employees by hotels, restaurants and similar business establishments, most who work today in lounges, bars and dining rooms are forced to accept employment without the benefit of employer contributions for FICA taxes, unemployment and workmen's compensation, or pension coverage. Many, if not most, purchasers of professional music refuse to consider themselves to be the musicians' employer, even though they continue to exercise the same control that they always have had over the musicians' working conditions, hours of work, days off and discipline. As a consequence, most traveling musicians are treated today as independent contractors. They are forced to bear their own expenses for self-employment taxes and health insurance, and risk periods of unemployment and illness alone without the security of either unemployment compensation benefits or group health coverage.

Paradoxically, precisely because of their status as independent contractors, professional musicians enjoy less power than ever before to control the terms and conditions under which they must work. Since the Taft-Hartley Act was passed in 1947, Section 2(3) of the LMRA has specifically excluded independent contractors from the protected status of an "employee" under the Act. Thus, rather than assist in the protection of musicians, sections of the LMRA stand as barriers to effective collective representation of professional musicians.

Under the National Labor Relations Board's (NLRB) interpretation of Sections 8(b) (4) and 8(e) of the Act, musicians are prohibited from compelling the purchasers of music who own nightclubs, restaurants or hotels to recognize their collection bargaining agent and from collectively setting wages and other terms and conditions of employment. See, Bow & Arrow Manor, Inc., 206 NLRB 581 (1973). Indeed, they cannot even picket or otherwise force purchasers of their services to sit down and bargain collectively with them. They are instead left to individually hazard the competitive pressures of the labor market in their industry, without union representation, which is a result that Congress surely did not intend. See, Findings and Declaration of Policy, Section A, LMRA, 29 USC Section 151.

(iii)

Self-Regulation of Industry by the American Federation of Musicians

While many musicians are prohibited by present law from collectively bargaining with the purchasers of their services, they also are prohibited by the LMRA from effectively regulating their own affairs with their own labor union, the American Federation of Musicians (the "AFM"). Over a period of years, many of the AFM's long-standing practices, which were originally adopted to protect its membership in the labor market, have been found by the NLRB to be in violation of the LMRA.

(iv)

Summary of Purpose of Proposed Legislation

In American Federation of Musicians v. Carroll, 391 U.S. 99 (1968), the United States Supreme Court recognized the unique characteristics of the music industry and judicially fashioned a broad exemption from the provisions of federal anti-trust law for professional musicians and their Union. However, that recognition and exemption is meaningless because of the restrictive provisions of the LMRA, which prohibit the exercise of the exemption that was granted by the Supreme Court.

The music industry, much as the garment and construction industries, is an industry which is out of step with much of industry in the United States. Its economic structures and employer-employee relationships conflict on a daily basis with the generalized mandate of the LMRA. Just as the industries for which exceptions were made by Congress in 1959, the music industry must receive exemptions from the broad reach of the LMRA in order to stand on equal footing with the industries for which the LMRA was truly designed.

That equal footing is the objective of S.281.

JENNINGS RANDOLPH
WEST VIRGINIA

COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
LABOR AND HUMAN RESOURCES
VETERANS AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

September 28, 1984

The Honorable Don Nickles
Chairman
Subcommittee on Labor
Senate Committee on Labor
and Human Resources
U.S. Senate
Washington, D.C. 20510

Dear Don:

Thank you for your consideration in scheduling hearings on oversight of the Taft-Hartley Act and including a review of my legislation, S. 281 in the September 13, 1984 hearing before the Labor Subcommittee.

As you know, I submitted several written questions to the American Federation of Musicians following the hearing, and I have just received their written replies. Please include the attached material in the official record for the September 13, 1984 hearing before our Subcommittee.

With best wishes, I am

Truly,

Jennings Randolph

Jennings Randolph

Enclosures

QUESTIONS SUBMITTED BY SENATOR RANDOLPH TO THE AMERICAN FEDERATION OF MUSICIANS, following Labor Subcommittee Hearing, September 13, 1984

1. My legislation, S. 281, would clarify the employer and employee relationship for labor law purposes and would bring legitimate collective bargaining back for musicians and the purchasers of thier services. However, it has been reported that my bill, S. 281, is a bill to provide special privileges to your union. Do you see any special privileges to be given to the AFM when S. 281 is enacted?

2. When a band or performer is hired to provide live music, who generally controls or determines the working conditions of the engagement? Who decides the hours, the songs, the dress?

3. What are the obligations of the musicians or the orchestra leader? How much authority does the musician have?

4. Where does the booking agent fit into this system and who does he represent?

5. The American Federation of Musicians represents 250,000 musicians in the U.S. and Canada, and yet I have heard that your organization does not speak for band leaders or orchestra leaders or others involved in musical performances and that many of these individuals do not want collective bargaining rights to be given to musicians. First, what evidence do you have that band or orchestra leaders support S. 281?

6. Is it your view that the NLRB has correctly interpreted the labor law with regard to musicians?

7. Do you believe that injustices have been served on musicians by the Board as an inadvertent result of their application of the law?

8. Musicians should have the right to be represented by a collective bargaining agent of their own choosing. Do you believe that the only way to ensure that right is to change the law?

9. There are several states in the U.S. that are so-called "right to work" states? What is your position with regard to right to work laws? Will changes we would make in collective bargaining in S. 281 affect state right to work statutes? Are you urging additional changes in these states?

10. In 1959 the Congress enacted amendments to the Taft-Hartley Act to address the particular needs of the work experiences of the building trades and garment workers. Would you elaborate for the Committee on how the music industry is similar to those industries and why the same type of relief is necessary?

11. In Mr. Guthrie's testimony you have provided several examples of serious problems musician are facing with regard to requiring that the performers sign management contracts and refusing to honor AFM contracts; the impossibility of collecting payments due to musicians for performances who have received "bad checks" in West Virginia and other places or who have just simply not been paid for their services, as in South Carolina racial discrimination; problems with booking agents' fees; and conditions of employment. Would you provide additional case histories?

12. Since the NLRB began to assert jurisdiction over entertainers, have you found that musicians are more likely to suffer exploitation or outright discrimination than they were when their labor organization (AFM) was able to protect their interests?

13. Would you elaborate for the Committee on the defaulters list which is prepared annually by the AFM? How is it prepared? How many are currently on the list? Please provide a copy of the current defaulters list by State. What can the individual musician do to protect himself from establishments represented by the defaulters list?
What can the AFM do now to held musicians who have been victimized?

QUESTIONS AND ANSWERS CONCERNING S.281

1. My legislation, S. 281, would clarify the employer and employee relationship for labor law purposes and would bring legitimate collective bargaining back for musicians and the purchasers of their services. However it has been reported that my bill, S. 281, is a bill to provide special privileges to your union. Do you see any special privileges to be given to the AFM when S. 281 is enacted?

   RESPONSE The sole purpose of S. 281 is to give musicians and other entertainers the same rights under the federal labor laws which now exist and have existed for many years for other labor organizations. We are not seeking any special privileges and feel that this legislation would correct a gross inequity in the law which has discriminated against musicians and entertainers since the Taft-Hartley Act was adopted.

2. When a band or performer is hired to provide live music, who generally controls or determines the working conditions of the engagement? Who decides the hours, the songs, the dress?

   RESPONSE The answer to this question varies according to the type of engagement. For example, in hotels and nightclubs, the management of the establishment determines the working hours, length and times of intermissions, the type of music to be performed, the type of dress to be worn by the performers, etc. The same situation is usually true in catering establishments, where the caterer engages the orchestra for the function. In all cases, the working hours and type of music to be played are usually determined by the purchaser of the music.

3. What are the obligations of the musicians or the orchestra leader? How much authority does the musician have?

   RESPONSE The obligations of the musicians are to arrive for the engagement at the proper time, properly dressed and to perform in accordance with the instructions of the orchestra leader, who carries out the desires of the purchaser. The individual musicians have no authority whatsoever once they accept the engagement and have no voice in determining the working conditions, type of music to be played or other factors. The orchestra leader is responsible to see that the purchaser receives the type of music that was requested and supervises the performance.

4. Where does the booking agent fit into this system and who does he represent?

   RESPONSE Traditionally, the booking agent represents the orchestra leader and functions as an employment agency seeking work for the orchestra leader and his band for which a commission is charged. In recent years, however, and particularly in nightclubs and lounges, booking agents make agreements with the owners of the establishments to furnish the entertainment. Although the usual commissions are charged to the musicians by the agent, in many cases the agent is not carrying out his true traditional function but is acting as a representative of the nightclub.

5. The American Federation of Musicians represents 250,000 musicians in the U.S. and Canada, and yet I have heard that your organization does not speak for band leaders or orchestra leaders or others involved in musical performances and that many of these individuals do not want collective bargaining rights to be given to musicians. First, what evidence do you have that band or orchestra leaders support S.281?

   RESPONSE To be answered by Ned Guthrie.

6. Is it your view that the NLRB has correctly interpreted the labor law with regard to musicians?

   RESPONSE This is a most difficult question to answer since it is a matter of opinion. In some cases, our attorneys have been of the opinion that the NLRB has incorrectly interpreted the labor law and in other cases, the opposite has been true. However, there is no doubt in the minds of all of the labor law attorneys that we have consulted that the only solution to the problems of the musicians and other entertainers caused by the application of the present law is to convince Congress to adopted S. 281. The interpretation and application of the present law has caused what we feel unnecessary and costly litigation which has benefitted no one other than the attorneys whose services were used.

7. Do you believe that injustices have been served on musicians by the Board as an inadvertent result of their application of the law?

   RESPONSE To be answered by Ned Guthrie.

8. Musicians should have the right to be represented by a collective bargaining agent of their own choosing. Do you believe that the only way to ensure that right is to change the law?

   RESPONSE Absolutely. A review of the labor cases since the adoption of the Taft-Hartley Act demonstrates clearly and vividly the need for passage of S. 281 so that musicians would have the same rights as other workers to be represented by a collective bargaining agent of their own choosing.

9. There are several states in the U.S. that are so-called "right to work" states. What is your position with regard to right to work laws? Will changes we would make in collective bargaining in S. 281 affect state right to work Statutes? Are you urging additional changes in these states?

RESPONSE S. 281 will have no effect whatsoever on the application of right to work statutes in states having such laws. The American Federation of Musicians is not seeking any changes in those state statutes. Adoption of S. 281 is the only remedial labor legislation that we are seeking.

10. In 1959 the Congress enacted amendments to the Taft-Hartley Act to address the particular needs of the work experiences of the building trades and garment workers. Would you elaborate for the Committee on how the music industry is similar to those industries and why the same type of relief is necessary?

RESPONSE The music industry is likewise unique in several respects and shares with the Garment and Construction Industries characteristics that put some of its long-standing practices in direct conflict with provisions of the LMRA. Musicians, like construction workers, usually enjoy only short term employment with particular employers. They, like their counterparts in the building trades, move from job to job with little hope of sustained work security with any one employer. Indeed, many professional musicians are forced to practice their profession in a nomadic fashion, traveling from city to city, working no more than a week or two at any one location, in night clubs, restaurants, and hotels across the country.

Because of the casual employment relationship into which traveling musicians are forced, they cannot enjoy the benfits of collective bargaining or association. For the most part they are compelled to strike their own bargain with little leverage as to the terms and conditions of employment under which they are employed.

11. In Mr. Guthrie's testimony you have provided several examples of serious problems musicians are facing with regard to requiring that the performers sign management contracts and refusing to honor AFM contracts; the impossibility of collecting payments due to musicians for performances who have received "bad checks" in West Virginia and other places or who have just simply not been paid for their services, as in South Carolina racial discrimination; problems with booking agents' fees; and conditions of employment. Would you provide additional case histories?

RESPONSE To be answered by Ned Guthrie.

12. Since the NLRB began to assert jurisdiction over entertainers, have you found that musicians are more likely to suffer exploitation or outright discrimination than they were when their labor organization (AFM) was able to protect their interests?

RESPONSE Definitely yes. The effectiveness of the American Federation of Musicians in protecting the rights of its members has been drastically curtailed since the NLRB began to assert jurisdiction over entertainers resulting in chaos in the music industry today with musicians being unable to have their union negotiate their working conditions or protect their livelihoods. It is a situation, which in my opinion was never envisioned by the proponents of the Taft-Hartley Act and which can only be corrected by this legislation.

13. Would you elaborate for the Committee on the defaulters list which is prepared annually by the AFM? How is it prepared? How many are currently on the list? Please provide a copy of the current defaulters list by State. What can the individual musician do to protect himself from establishments represented by the defaulters list? What can the AFM do now to help musicians who have been victimized?

RESPONSE The defaulters list was originally designed to advise all members of the union of those establishments which had failed to fulfill their contractual obligations with musicians. Prior to passage of the Taft-Hartley Act, it was most effective in securing payment of monies due to musicians for services rendered. However, in recent years its effectiveness has diminished to the point where it is meaningless for all intents and purposes. Local unions whose members have not been paid by a purchaser usually publish a local defaulters list and for the protection of their members, may request the International to include such names on the International Defaulters List. Attached hereto is a copy of the current defaulters list. An individual musician today can do very little, if anything, to protect himself against establishments represented by the defaulters list other than to decline to accept an engagement in the establishment. The only help the AF of M can currently give the musicians in some cases who have been victimized is to file a civil suit to collect the monies due, which can be extremely costly.

Senator NICKLES. Thank you very much for your statement.

Senator Randolph, do you have any comments?

Senator RANDOLPH. Thank you for your understanding. We are sort of halfway down the hall all of the time for the other hearing.

This could be asked, of course, of Vic and Ned, but the amendment that I have offered, and I repeat, of course, Senate 281, is an amendment to our U.S. labor law, not to our U.S. tax laws. What is your understanding, gentlemen, of changes in administrative or tax obligations on the part of employers and employees if Senate 281 becomes law? How were these issues addressed before the NLRB began to assert this jurisdiction that you have mentioned over the music industry?

Do you feel there is a conflict or difficulty in providing that a band or orchestra leader is an independent contractor for tax purposes and is an employee of a club or motel or hotel for labor law purposes when his or her band is engaged to play at one or more of the types of entertainment that we know spreads across America?

Mr. FUENTEALBA. Senator, it is not our intent or purpose to seek changes in the tax laws which would affect the respective responsibilities of nightclub owners or other purchasers of music. The adoption of these amendments would not change that responsibility in any way.

In fact, prior to the passage of the Taft-Hartley law, the issue of who had the responsibility for income taxes and social security taxes has always been a debatable issue and has never really actually been clarified. The amendments that we are seeking, in our opinion, would have no impact on that whatsoever. That is not our purpose.

We are merely seeking changes in the labor law to enable us to more adequately represent the interests of the musician.

Senator RANDOLPH. The law itself you are not desiring in any way to rip apart; is that correct?

Mr. FUENTEALBA. Pardon?

Senator RANDOLPH. The law itself, you're not attempting to rip it apart?

Mr. FUENTEALBA. No; absolutely not.

Senator Randolph. No; you're talking about a situation that has developed and needs to be corrected; is that right?

Mr. Fuentealba. Yes; prior to the passage of the Taft-Hartley law, we were able to effectively represent musicians by negotiating with the employers. At the present time, because of the interpretations of the law, with most of the purchasers being classified as neutrals and not the employers for labor law purposes, we have been unable to even get the purchasers to the bargaining table to negotiate agreements with them, and it has resulted in chaos in the music business with the musicians having no protection whatsoever, particularly the musicians who are traveling around the country, working in nightclubs and cocktail houses.

Senator Randolph. Just one more question. How many people, persons, artists, how many are affected under this, let's say, interpretation of the law in an adverse way?

Mr. Fuentealba. Well, we have a total of 250,000 members, of which approximately 230,000 are in the United States, the rest in Canada. With the exception of those that are working in a major symphony orchestra or working for other major industries, music industries, such as recordings where the record companies have acknowledged their responsibility as employers; everyone else is affected, from the musician who works one night a week in a little nightclub in West Virginia to the musicians who are working in the major hotels throughout the United States.

Senator Randolph. Thank you very much.

Senator Nickles. Thank you, Senator Randolph.

I have a quick question. What percentage of the musicians are represented by your union?

Mr. Fuentealba. Of the total number of working musicians, Senator?

Senator Nickles. Yes.

Mr. Fuentealba. I, frankly, do not have that information, but we represent the majority of professional musicians who earn their livelihoods as musicians. I would say that we probably represent at least 80 percent of the musicians or better.

Senator Nickles. And when was the NLRB decision, which was upheld by the Supreme Court, made that basically said the alternate purchaser of your services would not have to negotiate directly with you?

Mr. Fuentealba. I think I will let our counsel answer that question.

Mr. Abato. Senator, these decisions started being made by the NLRB as early as the early 1970's.

Senator Nickles. Is there anything under present law which prohibits you from negotiating directly with, say, the hotel or the club owners themselves? It looks to me like your legislation is just trying to bypass the middle man so that you can go directly to whoever happens to own the club or the hotel or whatever.

Mr. Fuentealba. Well, the problem that we have today is that there is no requirement that the purchaser negotiate with the union.

Senator Nickles. But you are not prohibited by law from doing it?

Mr. Fuentealba. We are not prohibited, if he is willing to acknowledge that responsibility, but unfortunately, they are not willing to do that.

Senator Nickles. In some cases you are negotiating contracts directly with the owners of hotels and clubs?

Mr. Fuentealba. Yes; for example, in Las Vegas, our union there negotiates directly with the owners of the hotels.

Senator Nickles. Some cases you would negotiate with those owners. In other cases you would negotiate with the band leader.

Mr. Fuentealba. Correct.

Senator Nickles. Are the majority of cases with the band leader or orchestra leader?

Mr. Fuentealba. It depends on the area. In some major cities, in New York City, for example, in Miami, FL, and a few other cities, there have been negotiations with orchestra leaders, but that is the exception to the rule. In most cases there is actually no one that is negotiating with the union. In other words, in those particular areas, the orchestra leaders demanded the right to negotiate with the union, and the union has negotiated with them, but that, again, as I say, is the exception to the rule and only occurs in those major areas.

Senator Nickles. Would your legislation then make it where the union would negotiate directly with the owners of the club? Would it prohibit a negotiation through the band leader?

Mr. Fuentealba. No, it would not. I would not prohibit negotiating with the orchestra leader. It would create a situation where you could have joint employers.

Senator Nickles. Right now, in some cases that is the situation, isn't it?

Mr. Fuentealba. That is primarily true in what we call the casual engagement field. The orchestra leaders, for example, that are currently negotiating with the local unions in those areas do the type of work such as dances, bar mitzvahs, weddings, and casual work of that nature. It has not had any impact at all on one of the most serious parts of the problem, and that is in the steady engagement field, such as the nightclubs and the cocktail lounges, where the musicians work 6 nights a week for the same purchaser for perhaps 2 or 3 weeks out of the month.

Senator Nickles. In most of those situations in a nightclub, the 6 nights a week and so on, are they negotiating with the nightclub owner?

Mr. Fuentealba. Unfortunately, with no one. That is what has really brought this problem to the forefront, the fact that these musicians are totally unprotected. In many cases there is no orchestra leader, as such. They are what they call cooperative groups under the law. They are defined as independent contractors under the current law. The club owners refuse to negotiate as employers. So they are left to fend for themselves.

Senator Nickles. But aren't they in many cases just that, independent contractors?

Mr. Fuentealba. In some cases they may be, but in the majority of cases many of them are incorporated and have their own corporations, particularly the larger groups. In some cases they do work for an orchestra leader, but again, he does not want to assume the responsibility of being an employer.

Senator **Nickles**. Would that be unanimous, or would there be some band leaders that liked the employer responsibility? I would think it might be both ways.

Mr. **Fuentealba**. I really couldn't answer that question, speaking on their behalf.

Senator **Nickles**. Mr. Abato, would you want to answer that question?

Mr. **Abato**. There are band leaders who have accepted the responsibility of being employers willingly and have done it. There are band leaders who once accepted that responsibility, who have in recent years converted overnight their employees to independent contractors by sending them a 1099 and saying, "Now you are an independent contractor." That is the problem area.

Senator **Nickles**. It seems like the group who you are representing would have a very diverse constituency where some of them would like to be independent contractors and some would want to be in the groups and so on.

Mr. Guthrie, did you want to make a comment?

Mr. **Guthrie**. Sure. I operated my band first as the leader. I turned in payrolls, and I assumed the responsibility of FICA as an employer, but when I worked, I worked 1 night a week, 2 nights a week, maybe 5 nights a week, but I considered myself as an employee of the purchaser, and that problem never came up. That's the way it was from 1896, as far as I can figure out, up until 1968.

In 1958, I got into a hassle with the State of West Virginia because they were requiring me as a leader to pay unemployment insurance, and I found out that there was a problem because our musicians were not employed enough with the music. Consequently, we had to get other jobs, day jobs, and moonlight. In fact, our music profession became moonlighting to our other employment.

Now, because of this particular status, they never could collect on insurance. So I told the State tax department, "I am not going to buy an insurance policy from you when you will not ever pay us any benefits from it. I will throw my horns in the Kanawha River before I will do it." So I prevailed, and we became a partnership band.

I operated as an independent contractor on contracts that stated that the purchaser was the employer and I was an employee. Now, I operated this way from 1958 until about 1976. Well, it was earlier than that. It was, I believe, 1969 or 1970, when NLRB charges began to show up.

I worked as a union official, a music teacher of 38 years, and a person of management. I owned a music store, a prominent music store, the Guthrie & Beane Music Co. Also I played as a territory band leader throughout that area in Virginia, Kentucky, and West Virginia.

I got a summons from a U.S. Marshall and it said that I was to cease and desist; that I was unlawfully engaging in secondary boycott activity as a union officer. I thought I was doing things right because we had informed our lcoal union bands that certain nightclubs had defaulted, and that these clubs owed money to your "brother musicians." These clubs had a chance to say yes or no, in other words, to arbitrate, and they chose to ignore us. They did other unfair things, and so I got summonsed into Federal court as a trustee of my union, and I found out that all of a sudden in trying to do the honorable things, which the Government had allowed us to do until 1968, when certain elements convinced the NLRB to try it another way; I found out that I was the criminal.

Like Senator Randolph says, the law does not fit the people. I wanted to be an employer of my men, and it did not work because of unemployment insurance. So I wanted to be an independent contractor and an employee, and it did work. Now the NLRB says that that is not right.

Senator **Nickles**. We appreciate your comments, gentlemen.

[The prepared statement of Mr. Guthrie and additional material supplied for the record follow:]

WRITTEN TESTIMONY AND SUPPLEMENTAL DOCUMENTS
of
NED H. GUTHRIE, PRESIDENT EMERITUS
of
LOCAL 136, AMERICAN FEDERATION OF MUSICIANS
and
NATIONAL LEGISLATIVE DIRECTOR for the
AMERICAN FEDERATION OF MUSICIANS

HEARINGS BEFORE THE
SUBCOMMITTEE ON LABOR
of the
COMMITTEE ON LABOR AND HUMAN RESOURCES

SENATE

S.281

SEPTEMBER 13, 1984

Mr. Chairman, members of the Subcommittee, I truly thank you for this hearing. My name is Ned H. Guthrie, President Emeritus of Appalachian Regional Musicians Union, Local 136 A. F. of M. in Charleston, West Virginia. Local 136 represents professional musicians in 13 counties in West Virginia and 6 counties in Virginia. I began my music career in 1926 with a three year enlistment in the 150th Infantry National Guard Band. I voluntarily applied for membership in Local 136 A. F. of M., because of its professional status. That was May 19, 1930. Five years of traveling with semi-name big bands followed. In 1936 I changed from a traveling musician to the status of local or territory performer, to provide musical services for the general public in the run of the mill-variety programs such as are produced locally in your hometowns, and performed by local and traveling professional musicians. I have spent a lifetime as a professional musician in this area. Although I passed the United States Civil Service Test for teacher of band and orchestra, I chose to teach private lessons individually for 38 years, with 7 years as band instructor at Prenter School in Boone County, West Virginia. Additionally, I was co-owner and operator of the Guthrie & Beane Music Company, a general music merchandising and music school operation for 22 years. I led a band from 1935 until 1975. After being elected President of the Charleston Musicians Union I gave up leadership of the orchestra to serve as full-time President and Business Representative of our Local.

I give this background as an example of how the American Federation of Musicians is mainly constituted in its membership throughout the Nation. We are an average citizen, taxpayer, and neighbor. Due to electronic and mechanical reproductions and with the substitution of recorded music we so-called local musicians are mainly weekenders, but we comprise 86% of the members in our Federation who are directly concerned and affected by recent rulings of the National Labor Relations Board, and who need to be included in the full benefits of the National Labor Relations Act as amended in 1947 and 1959. We have been excluded and it is not the American way to be excluded. It is the Polish way.

In our area of entertainment, consisting of services for public dances, conventions. nightclubs, back up musicians for local promoters of national attractions, the likes of Sonny & Cher, Liberace, Glen Campbell, Hello Dolly, Shrine Circus, Ringling Brothers Barnum & Bailey Circus, and Holiday on Ice, we local musicians are now being deprived the right to be an employee. However, the majority of opportunities are usually engagements of miscellaneous natures in a variety of establishments on weekends for Fraternal Clubs, High School or College Proms, and in Nightclubs. With the coming to West Virginia of liquor by the drink being permitted in private clubs, many lounges and nightclubs were opened up and have prospered. This change took place in West Virginia in 1967. State Law requires a membership card to be issued to patrons. These membership cards are obtainable at the door, usually at no cost. There was a great number of inexperienced opportunists who rushed to obtain a liquor license and opened up for business. Included were a number of questionable operators, some with a record of violence and crime that banded together to control the entertainers in the Charleston, West Virginia area. In 1972 the Prosecuting Attorney of Kanawha County, West Virginia called me and our Business Agent into his office to warn us of the dangerous nature of the club owners that we were dealing with. He again met with our then International President, Hal C. Davis, who came to Charleston to personally receive the same information.

When a purchaser shirks his employer responsibilities, he escapes costs. (See Exhibit A by Mark Tully Massagli, President of the Musicians Union of Las Vegas, Nevada)

Interference, racial discrimination, stopping payments on checks, cancellations of contracts, and early termination of contracted engagements became commonplace. Musicians, both local and traveling, came directly to the Local 136 officers, sometimes in fear, sometimes in desperation, asking and demanding help and representation from the Union Executive Board. Local 136's policy was to stand like a stone wall against these operators in their utter disregard of Civil Rights of musicians and contractural responsibilities. The policy of representing A. F. of M. members in labor disputes continued effectively during my administration for about 8 years after NLRB began to assert jurisdiction over the club date engagement.

In ~~1968~~ 1976, with the filing at NLRB of a secondary boycott charge against our neighboring local, Huntington, West Virginia Local 362 A. F. of M. and the entering of an accompanying suit for 29½ million dollars in Federal Court, I realized that NLRB rulings were changing our way of life and our musicians have discovered they can no longer expect union representation of their own choosing to intercede in their behalf. (See Exhibit B by Ray Hair, Jr.)

Small locals such as in West Virginia cannot finance defense of the likes of a 29½ million dollar lawsuit. By classifying orchestra leaders as not being employees of the owner/management in clubs, the NLRB is taking away employee rights from musicians and performers in Labor Law, in case after case, by the:

1. Denial of representation in time of need by their Union--similar to the Polish Worker and their Solidarity being ruled unlawful.
2. No protection or recovery when payment is stopped on checks for services rendered. (See Exhibit C from the Attorney General of West Virginia)
3. Deprivation of Civil Rights by discrimination because of race. (See Exhibit D by Lynne Sandy, Booking Agent)
4. Preventing ongoing collections of default wages for local and traveling groups. (See Exhibit E and E-1 by John Jackson and Gary Cottrill) There was also a $2,100 default collected in payments by me personally in a default by a club owner to a leader of a traveling group, member Phil Gonzalez of the then Ogden, Utah A. F. of M. Local 356. Now not possible.

To conclude I want to point out that I was involved in the above actions, a 54-year member in a small town union of part-time musicians who love music and the happiness it brings to the community, so much so that we change our lifestyle to fit the weekends and causal pattern of employment. This also changes the lifestyles of our families. We all adjust to the regularity that if the phone rings husband, wife, sister, or brother might have to go play for an occasion. The vast majority of American Federation of Musicians are small timers, like myself, but we serve the Nation. We are Eighty-Six Percent of the American Federation of Musicians. Our main area of employment is in the lounge, club date, and casual engagements. As much as any other portion of American workers, we need and deserve for Labor Law purposes, the right to classify as employees of those who use our services. S.281 would assure us that Right. I respectfully request the Committee to approve S.281.

Exhibit A

MUSICIANS UNION OF LAS VEGAS
LOCAL No 369 AFM, AFL-CIO
155 EAST TROPICANA AVENUE • 702/739-9369
P. O. BOX 7467 • LAS VEGAS, NEVADA 89101

August 14, 1984

Ned Guthrie
National Legislative Director
American Federation of Musicians
1562 Kanawha Boulevard, East
Charleston, WV 25311

Dear Ned:

As a follow up to our telephone conversation today my concern over the passage of S. 281 is in part as follows:

Musicians continuing in many cases being treated as "independent contractors" denies them the right to a traditional relationship of employee to employer, i.e., they do not usually get covered by workers compensation, are not covered by unemployment compensation and may not be qualified for social security disability or coverage. Certainly the relationship does not provide for negotiated health and welfare coverage and pension provisions for the worker.

I have found that many times, at the basis of "independent contractor" status there are dollars to be earned or retained by the one promulgating such a charade.

In addition those deemed to be self-employed have a greater FICA tax burden than an employee in the traditional sense if, in fact, such taxes, if any, are paid. When an employer states he is not an employer but a purchaser or contracts with individuals that "purchaser" relieves himself of tax responsibilities, the worker loses, the respective government agencies lose appropriate tax income and the purchaser escapes costs.

I think S. 281 would go far in correcting these inequities that now exist.

Please feel free to contact me if I may be of any assistance in the matter.

Fraternally,

Mark Tully Massagli

Mark Tully Massagli, President
Musicians Union of Las Vegas
Local 369, A. F. of M., AFL-CIO

MTM:gr

cc: Victor Fuentealba, President, A. F. of M.

FORT WORTH PROFESSIONAL MUSICIANS ASSOCIATION
3458 BLUEBONNET CIRCLE • FORT WORTH, TEXAS 76109

RAYMOND M. HAIR, JR.
President-Secretary
817-927-8478

August 10, 1984

Exhibit B

Ned Guthrie
National Legislative Director
American Federation of Musicians
1562 Kanawha Blvd., E.
Charleston, WV 25311

Dear Ned:

As President-Secretary of Local 72 I am responsible for maintaining the welfare and interests of the membership of this Local.

Since 1979, various leaders holding membership in the A. F. of M. have contracted for musical services with METRO HOTELS, INC., which owns and operates the Fort Worth Hilton. One such leader is Johnny Carroll, who is the proprietor of the JUDY-JOHNNY BAND.

During 1982, Metro began refusing to execute AFM contracts and instead required artists to sign their own, self-serving engagement contract (exhibit "A" attatched). The artists continued to request the AFM contract be used, but Metro declined and insisted on their own contract.

On or about April 30, 1984, Metro Hotels, Inc. created Metro Hotels Entertainment Services, Inc. All artists who perform musical services for Metro Hotels must now execute a much more stringent engagement contract, bearing the letterhead METRO ENTERTAINMENT SERVICES (exhibit "B" attatched). Artists are continuing to request a union contract; however, Metro Entertainment insists their own contract be signed as a condition of employment.

On June 15, 1984, I telephoned Mr. John Manderfeld of Metro Hotels and informed him that I represented the musicians who perform at the Fort Worth Hilton. I asked him who or what was METRO ENTERTAINMENT, and who did they represent. Manderfeld said that Metro Entertainment represented all the artists that come onto their properties. I told him it looked as if Metro Entertainment really represented the employer, since the contract provisions favored the employer. Manderfeld said that Metro Entertainment also represented the employer and that Metro Hotels and Metro Entertainment were the "same thing". The final provision of the Metro Entertainment contract provides for Metro Hotels to deduct a "fee" of 15% of the artist's gross salary for forwarding to Metro Entertainment. I ask you now, IS THIS EXTORTION? RACKETEERING?

We are now before Region 16 of the NLRB in action against Metro Hotels and Metro Entertainment, but the employers are able to raise the "independent contractor" issue and interfere with the musician's right to organize and bargain under the laws of the National Labor Relations Act.

As this case continues to develop, I will keep you fully informed of all proceedings.

Kindest regards.

Sincerely and fraternally,

Ray

Raymond M. Hair, Jr.
President-Secretary
Local 72, A. F. of M.

RMH/hd

enclosures

FORT WORTH HILTON

June 17, 1984

METRO HOTELS, INC.

[illegible]

[illegible]

The Judy and Johnny Band
1700 Park Ridge Terr.
Arlington, Texas 76012

Dear Judy and Johnny:

The purpose of this letter is to inform you that the Fort Worth Hilton will be forced to cancel your entertainment contract for the remainder of the year.

You will not need to return to the Fort Worth Hilton on September 3, 1984. This is pursuant to Section II of your contract which deals with terms of cancellation.

Cordially yours,

David H Sanders

David H. Sanders
Vice President and
General Manager of
Fort Worth Hilton

John J. McDonald
General Manager of
South Padre Hilton
(Former General Manager
of Fort Worth Hilton)

/omw

NATIONAL LABOR RELATIONS BOARD
REGION 16
Room 8A24, Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102

July 11, 1984

Mr. Ray Hair, President-Secretary
Fort Worth Professional Musicians
Association, Local 72AFM
3458 Blue Bonnet Circle
Fort Worth, Texas 76109

Re: Metro Hotels, Inc.
Case No. 16-CA-11694

Dear Mr. Hair:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted at this time. For the reasons set forth in attachment "A" hereto, I am refusing to issue complaint in this matter.

The procedures for filing an appeal to this dismissal are set forth in the enclosed Form NLRB-4938 and such appeal must be received by close of business on July 24, 1984.

Sincerely,

Michael Dunn
Regional Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosures: Forms NLRB-4938, NLRB-4767

cc: General Counsel, National Labor Relations Board, 1717 Pennsylvania Avenue, N. W., Washington, D. C. 20570
Mr. John Manderfeld, Metro Hotels, Inc., 6060 N. Central Expressway, Suite 860, Dallas, Texas 75260
Robert E. Luxen, Attorney, Gardere & Wynne, 1500 Diamond Shamrock Tower, Dallas, Texas 75201

Exhibit C

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHAUNCEY H. BROWNING, JR.
ATTORNEY GENERAL

January 19, 1984

Mr. Ned H. Guthrie
1562 Kanawha Boulevard
Charleston, West Virginia 25311

Dear Mr. Guthrie:

You have presented the following facts regarding musicians, singers, etc., inquiring as to whether such would fall within the purview of the bad check statutes, W. Va. Code § 61-3-39 and Code 61-3-39A.

> "Promoter contracts with the performer--musicians, singers, etc.--and said performance is concluded as per contract. The promoter issues check in payment which is accepted by the performer. After the performer leaves, the promoter issues a stop payment on the check. * * *" (Emphasis supplied.)

Code 61-3-39 provides in part:

> "It shall be unlawful for any person, firm or corporation to obtain any money, services, goods or other property or thing of value by means of a check, draft or order for the payment of money or its equivalent upon any bank or other depository, *knowing at the time of the making, drawing, issuing, uttering or delivering of such check, draft or order that there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation*. * * *" (Emphasis supplied.)

Code 61-3-39a provides in part:

> "It shall be unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent upon any bank or other depository, *knowing or having reason to know there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation*."

As noted the statutes specifically state that the person issuing the check knows or has reason to know that there is not sufficient funds on deposit to cover the check.

The fact that one stops payment on a check does not necessarily mean that there is not sufficient funds on deposit to cover said check. The statutes make no reference to the situation in which one stops payment on a check.

Based upon the facts that you have submitted, it is my opinion that such would not fall within the purview of the bad check statute of West Virginia.

Very truly yours,

Joseph Prudich

JOSEPH PRUDICH
ASSISTANT ATTORNEY GENERAL

JP/tmm

State Auditor
Glen B. Gainer, Jr., Chairman

State Treasurer
Larrie Bailey, Member

Worker's Compensation
Commissioner
Gretchen O. Lewis, Member

Executive Secretary
Si Galperin, Jr.

JOHN D. ROCKEFELLER IV
GOVERNOR
PUBLIC EMPLOYEES INSURANCE BOARD

Embleton Building, Second Floor
922 Quarrier Street
Charleston, West Virginia 25301
Telephone (304) 348-7850

January 17, 1984

Mr. Charles T. Carroll, Jr.
Co-Counsel, Majority Staff
Senate Committee on Labor-Management
Senate Hart Office Building
Washington, DC 20510

Dear Mr. Carroll:

Mr. Ned Guthrie asked that I write to you to let you know of my concern over a problem that many traveling musical bands have in West Virginia.

I served as a member of the West Virginia State Senate during the period of 1970-82. During the last year of my term it came to my attention that a number of traveling bands were being cheated out of their compensation - after doing a performance and receiving a check for their work, the promoter or individual who hired the band would then stop payment on the check.

This is not covered under our bad check law, and it is almost impossible for the bands to collect their money. I attempted to correct this situation while I was in the Senate, but because my term ended in 1982 and I did not seek reelection, time ran out before I was successful.

This is a serious problem in West Virginia, and I would appreciate any help you can give to Mr. Guthrie in resolving this situation.

Sincerely,

Si Galperin, Jr.
Executive Secretary

SGJr/bac

cc: ✓Mr. Ned Guthrie
1562 Kanawha Boulevard E.
Charleston, WV 25311

Exhibit D

LYNNE SANDY, BOOKING AGENT, A. F. of M. No. 10004
2419 Washington Street, E., Charleston, West Virginia 25311
(304)346-8861

RE: S.281 and H.R.5107

Since the age of nineteen, for thirteen years, I have been performing live music, and since 1978 I have been a licensed booking agent for the American Federation of Musicians. In reference to the Performing Arts Labor Relations Act (S.281) introduced by the Honorable Jennings Randolph of West Virginia, I am compelled to state my feelings as both an observer and a participant in labor-related matters where musicians are concerned.

A young black musician named Henry Graves, on behalf of his all-black group, took one local city and one county Parks and Recreation Agency to the Human Rights Commission on a discrimination complaint. As an active and interested member of the Musicians Union Local 136, I was invited by then-President of Local 136 to attend a "fact-finding conference" held by the Commission.

Without recounting the details of the case, I can say three things about why I thought this hearing was an inadequate forum for resolving the dispute:

1. It seemed obvious from their nervousness of manner that the respondents were guilty of discrimination. There is no way a public agency will admit to discriminatory words or actions, because of political ramifications. Henry Graves was so embarrassed and humiliated -- the town of Marmet is generally known to be racially tense.
2. Terry Nearhoof, the woman who conducted the Commission proceeding, was very abrupt and impatient, especially when addressing Union representative Guthrie. She created a very unbalanced and tense mood in the room.
3. Most disturbing was the fact that a Musicians Performance Trust Fund contract defined Henry Graves, the musician, as a "leader" and not an EMPLOYEE. This put Graves in the same category as his adversaries, the two Parks and Recreation

> agencies. Because the Union was not "primary" in the Trust Fund contract, Graves was not afforded the right of representation as an EMPLOYEE in this situation. The usual rules for arbitration procedures did not apply. How absurd! Guthrie was forced to go to the Human Rights Commission who, I felt were distinctly indifferent toward Henry Graves' grievance.

This incident is indicative of the second-class treatment thousand of performers have endured for decades. We cope, without remedy, with endless indignities and infringements of our rights. We simply want the same assurances, rights, and securities guaranteed other hard-working citizens.

"How can the Union help me?" Henry Graves asked Ned Guthrie with tears in his eyes. "I have two children to raise. How can I make it in an America like this?" Graves' band broke up, he gave up music and joined the service. This is only one sad ending to one of many sad stories.

There is no question that passage of Senate Bill 281 will improve the quality of life for performers everywhere.

Sincerely,

Lynne Sandy

Lynne Sandy

Exhibit E

October 13, 1983

Honorable Bob Wise
Member of the House of Representatives
Room 1508-Longworth House Office Building
Independence Avenue
Washington, D. C. 20515

Dear Congressman Wise:

Re: Taft-Hartley Amendment (H.R. 1758)

As a self-employed musician, the Union has been the only means we have had to protect ourselves from club owners (or employers) and booking agents.

Booking agents are self-employed salesmen of other peoples services. They receive from 10% to 20% of the total amount contracted by the band. In many cases, they receive more than any individual band member. The Union regulations are the only safeguard to prevent the commission rate from going even higher for American Federation of Musicians Members.

As part of this commission, it is an agents job to help enforce the standard union-approved contract, which protects musicians from unecessary expenses on promises alone.

The Union helped my group collect money due for a job which was booked and contracted for in advance. After we drove four hours to this job, we found another group prepared to play instead. In spite of our signed contract, we were unable to collect from the club owner. Our agent was also unable to collect, but still continued to book this club. The Union helped us collect our money after we informed them of our problem. It was the Union, not the agent, who helped us. In fact, the agent insisted on his commission.

In January 1978, I as leader of my band, signed an exclusive contract with Bill Heberlin, Media Promotions, Huntington, West Virginia, Jim Taylor was our personal manager. This agreement stated in general, that the agency would furnish us with three clothing outfits each, and would provide us with steady employment. In return, we would not book with any other agency.

Media wanted us to become a road band. A road band is a traveling group which is booked through a local agent booking by my agent. They stated that we would be routed from town to town, playing in each one, so we would not have to travel very far at any given time. Our first road job was in Naples, Florida, which is 1300 miles away.

My band played in Naples for three weeks. We were unable to play a fourth week because the club owner was unaware that we were available and had booked another band. We were left in Naples for a week with no place to work. Finally, after much conversation, Media found a job for us in Savannah, Georgia. From Savannah we went to Atlanta, then to Selma, Alabama. Then again we were left stranded--again with no job.

At this point disgusted, we came home seeking answers from the agency as to why we were unable to work. The only answer we received was "Sorry."

They then shipped us out to Burlington, Iowa (1000 miles away) then to Rockford, Illinois. We were then told we had no job, so again we came home, assuming that the agency was not able to fulfill its committment to us. I booked our band locally, but our members were very disgusted with our experiences and we all went to other careers.

After we had returned home for the second time, Mr. Heaberlin called me and told me that my group owed him over $2,000. for clothing outfits and for commission on the jobs that I had booked. As I was preparing to leave the area, I informed him that the clothing was located at my parents home, and that he could come and get them at his convenience. Neither I nor my parents have had any further communication from him.

In view of my experiences with booking agents, it is my opinion that there must be some protection for the independent musician. The independent musician works and has family committments just like other workers.

Unlike other workers there is no protection for the independent musician. Unfortunately, the union's powers are so limited that, by present laws and conditions, the musician is truly a second class citizen.

I understand our Union is trying to have the Taft-Hartley Act amended (H.R. 1758), so that the A. F. of M. may provide an independent musician as myself with the same services allowable in any other short-term employment. Employment crafts such as the Clothing Industry, Construction/Buildings and Trades. Under the Bill of Rights musicians are entitled to due-process.

Sincerely,

Johnny Jackson
Route 1, Box 385
Buffalo, West Virginia 25033

JJ:eh

cc: Mr. Ned Guthrie, Local 136, A. F. of M.

P.O. BOX 1333 (803) 662-6791

Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

Exhibit E-1

-1-

January 16, 1973
Tuesday

I Gary B Cottrell leader of the Band Betty and the Boys, wish to file a claim against Don James Agency, 1909 Ft [illegible], Fayetteville, N.C.

Referring to: booking of Betty and the Boys, into Francis Marion Inn, Florence S.C. Jan 8th through 21st 1973. First night (8th) Ronnie Edens, guitar player was unable to get here because of weather conditions. Tues, Wed and Thurs (9th, 10th, 11th) the band played. On the 12th jan Linda Hutchinson (bookkeeper here, left in charge) told us not to play fri + sat (13th + 13th) No reason was given. We didnt hear from Don James advising us as to what was going on

We were now informed by Linda Hutch that we were to remove our equipment from the stage that a new band, under Don James agency, was coming in to start Jan 15th 1973 (called Ortie Fat Bucket).

I called the Sheriff's Dept and had a man sent out to witness that I

was told to remove my equipment.
I have this in writing signed by with date.

In the beginning Don James sent my band here & told me it was a 2 week contract. Don James brought another one of his bands in to stay for the 2nd week, where he had us booked.

Come pay night Sat, Jan 13, 1973. I was told by Sheila Hutchinson that the owner of Francis Marion Inn, Mr [illegible] told her to forget about paying us that Don James would take care of us.

This job was booked for 600 per wk. plus rooms for the trio "Betty & the Boys".

Business here was poor due to weather conditions. Stores, schools & airports were closed. It wasn't just snow, it was four inches of freezing sleet. People here are scared to death of something like this because they aren't use to snow at all. But, the lounge here at Francis Marion Inn was kept open.

Come the end of our 1st week we were broke

P. O. BOX 1333
(803) 662-8791
Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

I contacted my local 136, pres., in Chas. W. Va. Mr Fred Guthrie. He was the only one in anyway who under-stood our problems. which at the present time was financial. I know this is of no concern of yours but I was here with my three children and Lonnie Evans was here with wife & 2 children.

Fred Guthrie, sent us $50.00 out of his own pocket just for my family to live and eat on. We are all members of Local 136, whom Fred Guthrie is pres. of, and a darn good one, who stands behind his members.

I was informed by Mr Hillard Balchoz, Sec. of S.C. local that no contracts have been filed on this job, nor was there a contract on Little Fat Buckel playing our 2nd week here.

No contracts can be found on this job, although Don James told us the contracts were sent to the Frances

Marian Inn

We did finally reach Don James Sunday Jan 14, 1973. I informed him of the situation and his words were, "I don't know what to do." Even though he called in The Artie Fat Becker Band (and they were suppose to be on vacation) to play our second week. He knew we hadn't been paid for our 1st week yet, and no other job to go to.

We wish to file claim for only five nights of our first week and six nights the second week.

Under Article 17, Section 6 a booker does not engage a band of musicians on a job without a contract. I believe this pertains to our situation. When I quoted this to Don James on the phone he laughed and said "thats just a bunch of crap," and, "he (Don James) knew all these people in New York, they were friends of his and nothing would be done."

When I told Don James that I want paid he said he would contact some people.

P. O. BOX 1333
(803) 662-6791

Francis Marion Inn
HIGHWAY 301 NORTH
FLORENCE, S. C. 29501

-3-

Nothing was done He did get the people to give us $100.00 to leave on but they took $48.00 out for phone calls, which I had to make all over the place trying to get help.

I do not believe what Don James said about the union not doing anything whatever the out come I am a union man all the way and is my whole band!!

I am filing for $1000.00 also for $300.00 traveling expenses. Fifty goes to Ned Guthrie, and $48.00 is for phone calls we had to make trying to get help.

I feel that this is only fair for not only have we lost two weeks pay but being stuck with no food for your family.

I do hope that something can be done for my situation.

Thank you
I remain

Gary B Cottrell
Local 136

sofogue...

Heart O' Town

Gary Cottrell — Call Collect

Wha 263 662-5491

Room 1??

Francis Marion ~~M~~ Inn — F. Marion H C

[redacted]

Gary B. Cottrill
Lot 9 Lakeshore Dr.
Chas. W.UA.

MR. NED Guthrie
c/o Guthrie AND Beane Music Co.
Quarrier Street
Chas. W.Va.

47H

Very important!

Senator NICKLES. Senator Randolph, and possibly other members of the committee may have additional questions to submit to you, and we would appreciate your response to those, as well.

Thank you very much.

Mr. FUENTEALBA. Thank you.

Senator NICKLES. Our next panelist is Godfrey Schmidt, representing the National Association of Orchestra Leaders.

Mr. Schmidt, welcome. Thank you for coming and for your statement today.

STATEMENT OF GODFREY P. SCHMIDT, ESQ., NATIONAL ASSOCIATION OF ORCHESTRA LEADERS, ACCOMPANIED BY CHARLES PETERSON, SECRETARY-TREASURER, AND JERRY DAVIS

Mr. SCHMIDT. I am not quite sure that I understood what you said about the printed document that we have here.

Senator NICKLES. Your document will be entered into the record in full. If you would summarize your printed statement, it would be appreciated.

Mr. SCHMIDT. I will submit that to you, and I would like to make a few remarks about it.

Senator NICKLES. Thank you.

Mr. SCHMIDT. In the first place, I would like to go back in history even before this document because I can see that that earlier history has been mistakenly outlined before you a little while ago. I was here when it was so mistakenly outlined.

For some 42 years, the AFM authored, printed and distributed a document known by the name in the industry as the Form B contract. Now, that Form B contract was a contract of engagement, and it had a certain set of lines in every one of them that said that the purchaser of the music is the employer of the orchestra leader and his orchestra members.

Because a group of orchestra leaders were outraged by that, they came to me in the year 1959 and complained about the fact that they are not recognized as the employers of the sidemen, even though they select the sidemen; they decide their wages; and they maintain a very strict surveillance over their performance; and hire and fire them.

Now, that form B contract, with that mythical clause that the purchaser of the music was the employer, came as a surprise to the purchaser of the music himself because no purchaser of music that I ever consulted ever regarded himself as the employer of the orchestra, either of the orchestra leader or of the members of his band.

I can say something else about that prior history. During that whole period, no local of the AFM and not the AFM itself ever approached an orchestra leader with the request that he sit down and bargain for wages of his sidemen. As a matter of fact, when I proposed that very thing to local 802 in New York, which is the largest local in the AFM, they said, "We never bargain."

"Well, what do you do instead," I asked.

"Well, we decree what the wages shall be in our bylaws and everybody has to comply with that."

Then I said, "Then there is no bargaining?"

"None at all."

I filed charges with the NLRB that they refused to bargain on a number of occasions, and finally in 1968, local 802 agreed to bargain with me. That was the first time in the history of the AFM that any of its locals ever sat down to bargain with orchestra leaders, whom I represented, in order to fix the wages of the sidemen.

Therefore, when Senator Randolph said before that they did not have the benefit, the sidemen did not have the benefit of collective bargaining, it was not the fault of the orchestra leaders. It was not the fault even of the local union, except in the sense that the local union following the AFM instructions refused ever to sit down and bargain for the wages of the sidemen because they had committed themselves for over 40 years to the doctrine and the myth that the purchaser of the music was the employer.

Of course, to think of the idea of going to the purchaser of the music and sitting down with him to negotiate was silly because, in the first place, the purchaser's contract with the musicians was a very transient thing. It did not happen but once in a year perhaps, and so forth.

Therefore, it was not the fault of the orchestra leaders or of anyone else, except the union, that they did not have the protection of collective bargaining, and even today most of the locals refuse to bargain collectively because they still live in the shadow of that myth that the purchaser of the music is the employer of the musicians.

Now, I tried to combat that a number of times. I tried to get the Federal courts in New York to declare that form B contract a fraud on the public because it did not tell the truth, but we did get a number of fine statements, in passing, from a court of appeals in New York, saying that the form B contract was, indeed, a fraud and so forth, but no court order came down forbidding the use of the form B contract.

Now, I also took up on appeal the whole question of who is the employer. I even went up to the Supreme Court of the United States with it. The Supreme Court of the United States refused to pass on that. It was an antitrust case I brought, but the Supreme Court of the United States said, even though we make no finding to that effect, we will assume that the orchestra leader is the employer, and mention was made before by Mr. Fuentealba, the president of the AFM, that some of the workers in Puerto Rico had no protection. That was exactly tbe result of the fact that the union went to the wrong person to be the employer. Instead of going to the orchestra leaders involved, and they had many well known Latin bands down there with orchestra leaders at the head, and they were the employers and they picked the members of the band, and so forth, and hired and fired them.

Anyway, this thing in Puerto Rico I was called in on by the hotels, and they said, "They, the union, want us to sit down and bargain."

I said, "Well, you are not the employer. It is the orchestra leaders who are the employers of their various bands. Therefore, you are right in not bargaining with them."

They brought me before the National Labor Relations Board, and they had one of the usual types of hearing officer who was practically 100 percent in favor of the union and its contentions. There was hardly a ruling in that case which lasted 3 weeks in San Juan that was not a ruling proposed by the union itself. So not surprisingly, the Board itself came down with a decision approving the hearing officer.

I then went to the court of appeals, and the court of appeals reversed and said the only employer of these musicians is the orchestra leader, and that decision came down December, 1 year ago, and I am sure that is one of the cases that is cited in the writing that I presented to you.

Senator NICKLES. Thank you very much.

Mr. SCHMIDT. I would be glad to answer any questions.

[The following was received for the record:]

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

(HEREIN CALLED "FEDERATION")

WITHDRAWN

CONTRACT

Local Number ________

THIS CONTRACT for the personal services of musicians on the engagement described below, made this __________ day of __________ 19___, between the undersigned Purchaser of Music (herein called "Employer") and __________ musicians.* (including leader)

The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1. Name and Address of Place of Engagement ______________________

Print Name of Band or Group ______________________

2. Date(s), starting and finishing time of engagement ______________________

3. Type of Engagement (specify whether dance, stage show, banquet, etc.) ______________________

4. WAGE AGREED UPON $ ______________________ (Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

5. Employer will make payments as follows: ______________________ (Specify when payments are to be made)

Upon request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall make advance payment hereunder or shall post an appropriate bond.

If the engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund, and the Employer and leader agree to be bound by the Trust Indenture dated October 2, 1959, as amended, relating to services rendered hereunder in the U.S., and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6. The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7. In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall, as agent of the Employer, enforce disciplinary measures for just cause, and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond their control. On behalf of the Employer the leader will distribute the amount received from the Employer to the musicians, including himself as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the Employer at or before the commencement of the employment hereunder and take and turn over to the Employer receipts therefor from each musician, including himself. The amount paid to the leader includes the cost of transportation, which will be reported by the leader to the Employer.

All employees covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to the Labor-Management Relations Act, 1947, all employees who are members of the Federation when their employment commences hereunder shall be continued in such employment only so long as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

To the extent permitted by applicable law, nothing in this contract shall ever be construed so as to interfere with any duty owing by any musician performing hereunder to the Federation pursuant to its Constitution, By-laws, Rules, Regulations and Orders.

(Continued on reverse side)

X ______________________ Print Employer's Name

______________________ Signature of Employer

______________________ Print Street Address

______________________ City ______ State ______ Zip Code

______________________ Telephone

X ______________________ Print Leader's Name ______ Local No.

______________________ Signature of Leader

______________________ Leader's Home Address

______________________ City ______ State ______ Zip Code

______________________ Booking Agent ______ Agreement No.

*This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer levies under rulings of the U.S. Internal Revenue Service and of some state agencies.

FORM B-2B REV. 3-74

Additional Terms and Conditions (continued)

To the extent permitted by applicable law, any musicians on this engagement are free to cease service hereunder by reason of any strike, ban, unfair list order or requirement of the Federation or of any Federation local approved or sanctioned by the Federation, and shall be free to accept and engage in other employment of the same or similar character or otherwise, without any restraint, hindrance, penalty, obligation or liability whatever, any other provisions of this contract to the contrary notwithstanding.

Representatives of the Federation local in whose jurisdiction the musicians shall perform hereunder shall have access to the place of performance (except to private residences) for the purpose of conferring with the musicians.

No performance on the engagement shall be recorded, reproduced or transmitted from the place of performance, in any manner or by any means whatsoever, in the absence of a specific written agreement with the Federation relating to and permitting such recording, reproduction or transmission.

The Employer represents that there does not exist against him, in favor of any member of the Federation, any claim of any kind arising out of musical services rendered for such Employer. No musician will be required to perform any provisions of this contract or to render any services for said Employer as long as any such claim is unsatisfied or unpaid, in whole or in part. If the Employer breaches this agreement, he shall pay the musicians in addition to damages, 6% interest thereon plus a reasonable attorney's fee.

To the extent permitted by applicable law, all of the Constitution, By-laws, Rules and Regulations of the Federation and of any local thereof applicable to this engagement (not in conflict with those of the Federation) will be adhered to and the parties acknowledge that they are and each has the obligation to be, fully acquainted therewith.

It is expressly understood and agreed by all the parties hereto that neither the Federation nor any subordinate body thereof is liable for any breach of this agreement by the employer or by any of the employees.

Names of Musicians	A.F.M. Local and U. S. Social Security Numbers (if any)		Direct Pay; and Pension Fund Contributions (where applicable)	
Leader			$	$

WITHDRAWN

IMPORTANT EXCERPTS FROM THE AFM LETTER

"All musicians including the leader-contractor even in the club date business, will be employees of the person or business entity who purchases their services."

"Band leaders-contractors would, for labor law purposes like their sidemen, be employees of the purchaser of music services on a club date or any other type engagement."

"On a typical casual engagement (club date) the father of the bride or the chairman of the ball is the purchaser of the musicians' services, he will be the employer***of all the musicians including the leader-contractor***."

"And it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as it relates to our business. You will recall that our old Form B contract for all engagements, identified the purchaser as the employer of the musicians including the leader-contractor and had a statement at the bottom, that the contract did not determine who was responsible for IRS and State Employment Taxes."

"You mention that the Taft-Hartley law***prohibits leaders from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue as leader-contractors would, for labor law purposes only, become employees."

AMERICAN FEDERATION OF MUSICIANS
OF THE UNITED STATES AND CANADA
AFFILIATED WITH THE A.F.L.-C.I.O.
REGISTERED

February 25, 1983

Ned H. Guthrie
National Legislative Director
1562 Kanawha Boulevard, East
Charleston, WV 25311
—
(304) 345-7200

Don Russell
Don Russell Orchestras
The Boston Park Plaza Hotel
50 Park Plaza
Boston, Massachusetts 02117

Dear Mr. Russell:

Thank you for yours of January 26, 1983.

I am pleased to note your interest in our proposed amendments to the Taft-Hartley Act.

My responses to your questions in that letter are as follows:

All musicians, including the leader-contractor, even in the club date business, will be employees - FOR LABOR LAW PURPOSES ONLY - of the person or business entity who purchases their services. Please note that the proposed amendments are to the Taft-Hartley Act only, and that law pertains only to Labor-Management relations. Thus, it has no bearing on rulings of the Internal Revenue Service as to who may or may not be an employer or employee for tax purposes. Historically, the Internal Revenue Service has held that the typical club date band leader is the employer of his sidemen musicians, or in some cases his sidemen are independent contractors. Our proposed amendments would in no way affect those relationships for tax purposes.

Band leaders-contractors could still be members of the Union, as they would for Labor Law purposes, like their sidemen, be employees of the purchaser of the musical services on a club date, or any other type engagement.

On a typical casual engagement (club date) the father of the bride, or the chairman of the ball is the purchaser of the musician's services, he will be the employer - FOR LABOR LAW PURPOSES ONLY - of all the musicians, including the leader-contractor. This does not present any objectionable situation for the father of the the bride, or chairman of the ball, and it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as they relate to our business. You will recall that our old Form B Contracts for all engagements, identified the purchaser as the employer of the musicians, including the leader-contractor, and had a statement at the bottom that the contract did not determine who was responsible for IRS and State employment tax purposes.

You mention that Taft-Hartley Law specifically stating that employers cannot belong to unions. For the record: Nowhere in the Act is this stated, and the Courts have held that employers can, if they so desire, be members of labor unions which represent their employees, but the Act prohibits them from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue, as leader-contractors would - FOR LABOR LAW PURPOSES ONLY - become employees.

We cannot conceive of any reason why a legitimate leader-contractor would not be better off were our amendments passed than he is now under the chaos that exists as to the employer-employee relationships for Labor Law purposes. If a member leader-contractor becomes an employee of the purchaser, as in the past, the AFM and its locals will again be able to protect his interests fully as well as those of his sidemen. The current position of the National Labor Relations Board that a leader-contractor is an independent contractor has severely limited our union in protecting the interests of our many members who function as leader-contractors.

I trust the above answers your questions, if not; please do not hesitate to contact me further in the matter. We sincerely solicit your support of our amendments which will bring order out of chaos in the music business, and benefit all musicians: Leader-contractors and sidemen.

Fraternally,

Ned H. Guthrie
National Legislative Director
American Federation of Musicians

NHG/arw

cc: Joe MacDonald, President
Local 9-535

NA OL

news release

FOR RELEASE:

U.S. COURT OF APPEALS RULES HOTELS AND CASINOS ARE NOT EMPLOYERS OF MUSICIANS

In a landmark decision held to be a serious blow to the policy and practice of the American Federation of Musicians, the United States Court of Appeals in New York City, ruled that orchestra leaders, not hotels and casinos are the employers of musicians even when they play long-term engagements at hotels and casinos.

It all began when the hotels and casinos in Puerto Rico, following the advice of the National Association of Orchestra Leaders and its attorneys, refused t bargain collectively with the Puerto Rican American Federation of Musicians Local, claiming that orchestra leaders are independent contractors and as such the leaders are the employers of their own sidemen and that lounge acts that are equal partners (co-ops) are also independent contractors.

The hotels and casinos took a negative position when the union demanded that the hotels and casinos bargain or continue to bargain collectively with the union. The union claimed that it represented the musicians and that the musicians are employees of the hotels and casinos. The hotels and casinos countered that since the musicians are not their employees, there can be no pretense at collective bargaining between hotels, casinos and the AFM local. The union thereupon filed charges with the National Labor Relations Board alleging that the hotels and casinos violated labor law when they refused to bargain with the AFM local for wages and working conditions covering the musicians who played short or long-term engagements at hotels and casinos.

Following investigation of the charge, the National Labor Relations Board issued a complaint and ordered the hotels and casinos to face a hearing before a National Labor Relations Board Administrative Law Judge. A four week trial was held. Hotel Executives, orchestra leaders, lounge acts, musicians, an official of the National Association of Orchestra Leaders and the union tes-

(PLEASE TURN)

tified. Following the trial, the Administrative Law Judge issued a forty n. (49) page decision holding that hotels and casinos are legally employers of musicians and as such, they, the hotels and casinos were guilty of refusing to bargain with the union. The Judge in his decision, also said that the band leaders on the steady engagements were hotel supervisors and not independent contractors, and that all musicians who played for the band leaders were hotel employees! This decision was affirmed by the National Labor Relations Board itself.

However, Godfrey P. Schmidt (the National Association of Orchestra Leaders' attorney) who together with the Puerto Rican attorneys who represented the hotels and casinos, appealed the decision to the United States Court of Appeals in New York City. Mr. Schmidt's first job however, was to convince the hotel lawyers that the union's position was illegal! Following the hearing, the United States Court of Appeals reversed the National Labor Relations Board decision. It held that the hotels and casinos did not violate law when they refused to bargain with the union; because the orchestra leaders, their musicians and lounge acts were not employees of the hotels and casinos. The Court said that the musicians were the employees of the orchestra leaders and the musical groups that comprise equal partners were, like the orchestra leaders, independent contractors. In reversing the NLRB decision, the panel of the three United States Court of Appeals' Judges, among other things said:

> "***Common sense would suggest that musicians working together as a group are employed by their leaders." And that "Under the common law test, an employer-employee relationship exists if the purported employer controls or has the right to control both the results to be accomplished and the "manner and means" by which [only the orchestra leader can bring] about that result." And that because "The hotels determine working hours including overtime, and the locations within the hotels where the bands play." And " ocasionally the hotels require certain types of music and direct that the music's volume be increased or decreased." And that the hotels "can order the music stopped to speed up food service." And just because "the hotels determine the size of the bands needed and sometimes require the size to be increased to produce a certain sound.***these facts fail to demonstrate any significant hotel regulation over the means by which the bands produce the music. Instead, the record reveals that the band leaders exercise all the significant control over the manner of their own and their musicians' performances. The leaders hire, fire, instruct and discipline the musicians in their band without consult-

> ing or following any guidelines set by the hotels.***the leaders themselves and not the hotels select additional and replacement musicians,***select the repertoire, instruments used, style, tempo and other standards of the performance." And that "A further indication that steady engagement musicians and band leaders are not employees of Association Hotels arises from the fact that the musicians and leaders are not subject to the same personnel practices and disciplinary rules as are admitted hotel employees. For example, steady engagement musicians and band leaders***do not file standard hotel job applications and do not have hotel personnel records;***" And that "band members are not given detailed rules regulating their conduct as are admitted hotel employees." And that "Further, the mere fact that a hotel imposes certain restrictions on the conduct of musicians to protect the good will of the hotel and the welfare of its customers is not of controlling significance." And that the hotels do not "have the right to exert any significant authority over the manner in which either the band leaders or the musicians perform. Thus, the evidence establishes that the steadily engaged hotel musicians are not hotel employees***." And that "Although some bands perform at Association hotels for periods in excess of a year, duration of employment does not in and of itself suggest employee status." And that "The mere fact that Guy Lombardo played in the Main Ballroom [the Grill] of the Roosevelt Hotel for countless years, did not make him and his Royal Canadians, Roosevelt Hotel employees."

This landmark decision will have wide impact on the music business since many hotels and casinos were coerced to believe that they were employers of musicians. Charles Peterson, Treasurer of the National Association of Orchestra Leaders commenting on the decision said:

> "This decision, one of the many in our favor, confirms our argument that orchestra leaders, groups that are equal partners (co-ops) and singles, are not employees of hotels, casinos, lounges, clubs and other buyers of music; even though such musicians may play long term engagements at hotels, casinos, lounges, clubs and other establishments. Our attorneys and attorneys representing hotels and casinos nationwide, are taking full advantage of this precedent-setting decision in order to abolish the American Federation of Musicians' policies and practices of compelling all hotels, casinos, lounges and clubs, who are not employers of musicians, to become and remain employees of such establish-

(PLEASE TURN)

"Now, as a result of this landmark decision, we will make preparations for similar law suits in Las Vegas, Reno, San Francisco and Los Angeles, for the reason that the ruling by the 2nd Circuit here in New York which is generally recognized as 2nd in importance to the Washington, D. C. Court of Appeals, would have strong influence on the thinking of Federal Judges throughout the nation."

FOR FURTHER INFORMATION CONTACT
CHARLES PETERSON, Treasurer
34 Metropolitan Oval
New York, N.Y. 10462
(212) 863-8997

NOTE - UNDERSCORING ON DECISION BY N.A.O.L.

UNITED STATES COURT OF APPEALS

For the Second Circuit

Nos. 1197, 1457, 1458—August Term, 1981

(Argued July 12, 1982 Decided September 29, 1982)

Docket Nos. 82-4022, 82-4040, 82-4042

Hilton International Company
d/b/a Caribe Hilton Hotel,

Petitioner,

—against—

National Labor Relations Board,

Respondent.

National Labor Relations Board,

Petitioner,

—against—

Puerto Rico Hotel Association; San Juan Hotel Corporation d/b/a El San Juan Hotel and El Conquistador Hotel, The Puerto Rico Hotel Corporation d/b/a The Palace Hotel; Condado

MY UNDERSCORING-C.P.

HOLIDAY INN; and HILTON INTERNATIONAL COMPANY d/b/a LA CONCHA HOTEL-CONDADA BEACH HOTEL,

Respondents.

◆

Before:

CARDAMONE and WINTER, *Circuit Judges,*
and MALETZ, *Judge, Court of International Trade**

◆

Petition for review of an order of the National Labor Relations Board finding petitioner in violation of sections 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. § 158(a)(1) and (5) (1976) and cross-petition for enforcement.

◆

AGUSTIN COLLAZO MOJICA, Hato Rey, Puerto Rico (William Lespier, Lespier, Munoz Noya & Ramirez, Hato Rey, Puerto Rico, of counsel), *for Petitioner-Respondent Hilton International Company.*

GODFREY P. SCHMIDT, New York, New York (Maria Milagros Soto, Hato Rey, Puerto Rico, of counsel), *for Respondents Puerto Rico Hotel Corporation and Condado Holiday Inn*, respectively.

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* Honorable Herbert N. Maletz, Judge, United States Court of International Trade, sitting by designation.

Michael J. Dougherty, Attorney, National Labor Relations Board, Washington, D.C. (William A. Lubbers, General Counsel, John E. Higgins, Jr., Deputy General Counsel, Robert E. Allen, Acting Associate General Counsel, Elliott Moore, Deputy Associate General Counsel, Andrew F. Tranovich, Attorney, National Labor Relations Board, Washington, D.C., of counsel), *for Petitioner-Respondent National Labor Relations Board.*

◆

Cardamone, *Circuit Judge*:

Most people listening to live music in a hotel are only concerned with whether the music enhances their dining or dancing pleasure. They do not consider whether the musicians are employees of the hotel or work for the leader of the band. Were the question seriously entertained, common sense would suggest that musicians working together as a group are employed by their leader. That question is precisely the one presented on appeal and on the record in this case the common sense conclusion finds full support.

On September 11, 1979, complaints were issued against the Puerto Rico Hotel Association (the Association), which represents certain Puerto Rico hotels for purposes of collective bargaining, and several of the Association's members. The complaint was based upon charges filed by the Federacion de Musicos de Puerto Rico, Local 468 (the Union). The individual hotels named in the complaints included: the San Juan Hotel Corporation d/b/a/ El San Juan Hotel and El Conquistador Hotel; the Puerto Rico Hotel Corporation d/b/a the Palace Hotel; the Condado Holiday Inn; and the Hilton International Company d/b/a/ the Caribe Hilton Hotel and the La Concha Hotel-Condado Beach Hotel. Specifically, the complaints asserted that the Union represented musicians employed by Association hotels for so-called "steady engagements" (typically in excess of one week), and that the Association's refusal to bargain collectively with the Union until the Union conceded that the musicians were independent contractors rather than hotel employees, violated Sections 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act), 29 U.S.C. §§ 158(a)(1), (3) and (5) (1976). The complaints further alleged that the Association and its named members violated Sections 8(a)(1) and (5) of the Act by using personal service contracts that disclaimed the employee status of the musicians and by suspending bargaining with the Union because the Union had filed unfair labor practice charges. Additionally, the complaints charged that the El San Juan Hotel, the El Conquistador Hotel and the Palace Hotel, acting as individual entities, violated Sections 8(a)(1) and (5) of the Act by withdrawing the Association's authority to bargain with the Union on their behalf.

After a hearing the Administrative Law Judge (ALJ) found that the band leaders in charge of the steady engagement hotel musicians were hotel supervisors, not independent contractors, and that the musicians themselves were hotel employees. The ALJ further concluded that the Union was the proper bargaining representative of the musicians and that, therefore, the Association's conditional refusal to bargain with the Union violated Sections 8(a)(1) and (5) of the Act. The ALJ also held unlawful the Association's suspension of bargaining because of the Union's filing of charges, and the three hotels' withdrawal from the Association in order to avoid collective bargaining. Subsequently, the National Labor Relations Board (the Board) issued a decision and order that summarily adopted the ALJ's decision and required the Association and certain of its members to take appropriate remedial measures.

The Caribe Hilton Hotel has petitioned for review of the Board's decision and order, arguing, in part, that the Board erred in classifying the musicians who perform at the hotels as hotel employees and the band leaders as hotel supervisors. The Board has filed a cross-application for enforcement of its order against the Association and the named hotels. Because there is not substantial evidence in the record read as a whole to support the Board's characterization of the steady engagement musicians as hotel employees and of the band leaders as supervisory employees, we grant the petition for review and deny the cross-petition for enforcement of the Board's order.

I

Section 2(3) of the Act, 29 U.S.C. § 152(3) (1976), specifically excludes from the definition of "employee", and thus from statutory coverage under the Act, any "individual having the status of an independent contractor." General principles of agency law govern the distinction between "employee" and "independent contractor" for purposes of the Act. *See, e.g., NLRB v. United Insurance Co.*, 390 U.S. 254, 256 (1968); *Local 777, Democratic Union Organizing Committee v. NLRB*, 603 F.2d 862, 909 (D.C. Cir. 1978); *Lorenz Schneider Co. v.*

NLRB, 517 F.2d 445, 446 (2d Cir. 1975). This Court in *Herald Company v. NLRB*, 444 F.2d 430, 432-35 (2d Cir.), *cert. denied*, 404 U.S. 990 (1971), used the common law "right to control" test for distinguishing between employees and independent contractors. Under the common law test an employer-employee relationship exists if the purported employer controls or has the right to control both the result to be accomplished and the "manner and means" by which the purported employee brings about that result. *Lorenz Schneider*, 517 F.2d at 451; *see also* Restatement (Second) of Agency § 220(1) (1958). As Judge Friendly noted, this test is difficult to apply since the result is necessarily a function of the manner and means employed. *Lorenz Schneider*, 517 F.2d at 451. Nevertheless, "the more detailed the supervision and the stricter the enforcement standards, the greater the likelihood of an employer-employee relationship . . . ." *Id.* Factors which may be considered in determining employee status include: whether the purported employee is engaged in a distinct occupation or business; whether the work involved is usually done under an employer's direction or by an unsupervised specialist; the skill involved; who supplies the instrumentalities and place of performance; the length of employment; the method of payment (by the time or by the job); whether the work is part of the employer's regular business and/or necessary to it; and the intent of the parties creating the relationship. Restatement (Second) of Agency § 220(2). No single factor is determinative, *Lorenz Schneider*, 517 F.2d at 449.

II

The ALJ relied on the following facts in finding that the hotels control the members of the steady engagement bands. The hotels determine working hours including overtime, and the locations within the hotels where the bands play. Occasionally, the hotels require certain types of music and direct that the music's volume be increased or decreased. The maitre d'hotel can order music stopped to speed up food service. Additionally, the hotels determine the size of the bands needed and sometimes require that size be increased to produce a certain sound.

Although these facts indicate that the hotels control each band's final product (music of the type requested by the hotels at the time and place desired), these facts fail to demonstrate any significant hotel regulation over the means by which bands produce the music. Instead, the record reveals that the band leaders exercise all the significant control over the manner of their own and their musicians' performances. The leaders hire, fire, instruct and discipline the musicians in their bands without consulting with or following any guidelines set by the hotels. In fact, Association hotel officials do not generally hire, discipline or fire individual band members; an Association hotel contractually can only terminate the engagement of an entire band. Moreover, the leaders themselves, and not the hotels, select additional and replacement musicians, approve musicians' sick leave and vacations, schedule and conduct band rehearsals, and select the repertoire, instruments used, style, tempo, and other standards of performance. The leaders occasionally arrange outside employment for their bands such as television shows, club dates, single engagements and recording sessions. Although some hotels require band members to dress uniformly during their performances, the band leaders and musicians, not the hotels, select and pay for their own uniforms.

A further indication that steady engagement musicians and band leaders are not employees of Association hotels arises from the fact that the musicians and leaders are not subject to the same personnel practices and disciplinary rules as are admitted hotel employees. For example, steady engagement musicians and band leaders do not have access to hotel grievance procedures; they do not file standard hotel job applications and do not have hotel personnel records; they do not receive hotel uniforms and are not eligible for employee paid vacations. Instead, the various steady engagement bands contract with the hotels, often through their agents, not for the services of their individual members but for the services of the entire band. In addition, while some Association hotels have issued general rules of conduct barring musicians and leaders from drinking on stage, gambling in hotel casinos, and socializing with guests, the ALJ acknowledged that band members are not given detailed rules regulating their conduct, as are admitted hotel employees. Further, the mere fact that a hotel imposes certain restrictions on the conduct of the musicians to protect the goodwill of the hotel and the welfare of the its customers is not of controlling significance. *Cf. Lorenz Schneider*, 517 F.2d at 451 (franchisor's imposition of standards upon operations of franchisee to protect goodwill not sufficient evidence of control to establish employer-employee relationship).

In short, the record in this case indicates that the Association hotels exercise control over the type, time and location of music produced by the steady engagement bands; nevertheless, it does not appear that they have the right to exert any significant authority over the manner in which either the band leaders or the musicians perform. Thus, the evidence establishes that the steadily-engaged hotel musicians are not hotel employees, but rather employees of their band leaders.

Given the musicians' status as employees of the band leaders, we must determine whether the band leaders are independent contractors or hotel supervisors. The Board argues that even if the Association does not exercise over the musicians and leaders that quantum of direct control normally demonstrative of an employer-employee relationship, the band leaders are hotel supervisors who exercise control over the musicians in the capacity of autonomous department heads, such as a chef or maitre d'hotel. We find this argument unpersuasive. Leaders usually form their bands before contracting with Association hotels. Most bands bear their leader's name and build up their reputations under that name. Leaders sometimes arrange outside engagements for their groups, evidencing an independent entreprenurial status not normally associated with the staffs of hotel kitchens or dining rooms. Significantly, leaders usually deal with Association hotels through booking agents and are not subject to the same hotel personnel procedures as are chefs and maitre d's.

Although the record contains references to a few instances in which bands stayed on at Association hotels with new leaders after their original leaders had left, there are also references to whole groups remaining together and moving to different engagements. In fact, one of the groups that had stayed on intact when its original leader left later became a new group and then moved on intact under the group's subsequent leader. Thus, the steadily-engaged musical groups controlled by the band leaders have an independent identity that is not characteristic of hotel departments.

Other Restatement factors commonly used in determining employee status support the conclusion that the steadily-engaged leaders and musicians are not hotel employees. All the parties acknowledged that the musicians and band leaders who perform in Association hotels are highly skilled members of a clearly distinct occupation. Moreover, the band members usually provide their own instruments and their own sheet music.

Although the ALJ apparently placed great emphasis on the fact that Association hotels provide their steady-engagement bands with rooms in which to perform, this fact is not always significant. For instance, building construction firms generally perform their services at locations provided by the parties with whom they contract without jeopardizing their status as independent contractors.

The ALJ's decision also implies that the method used to pay Association hotel musicians indicates an employer-employee relationship. Steady engagement bands typically contract with Association hotels to perform for a lump-sum amount, exclusive of overtime, based upon the number of band members and hours worked per week. Association hotels, however, usually pay each musician through an individual employee payroll check, instead of merely distributing to the leader the entire lump-sum. The hotels also withhold payroll taxes from the musicians' paychecks. We do not accord much weight to this fact, however, since the employees of independent construction contractors engaged by at least one Association hotel are paid in the same manner.

It is unclear how much consideration, if any, the ALJ attached to the fact the Association hotels hire musical groups for long term engagements. Although some bands perform at Association hotels for periods in excess of a year, duration of employment does not in and of itself suggest employee status. *Cf. Associated Musicians of Greater Newark, Local 16*, 206 NLRB 581 (1973), *aff'd*, 512 F.2d 991 (D.C. Cir. 1975) (orchestra members who performed exclusively at banquet hall lounge for over four years not banquet hall employees). As developed at oral argument, the mere fact that Guy Lombardo played in the main ballroom of the Roosevelt Hotel for countless years did not make him and his Royal Canadians Roosevelt Hotel employees.

II

On review, the Board's findings are entitled to deference if supported by substantial evidence in the record taken as a whole, *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *NLRB v. Donald E. Hernly, Inc.*, 613 F.2d 457, 462 (2d Cir. 1980). The Supreme Court made clear in *United Insurance* that although the determination of employee status requires the application of law to facts and does not involve any special Board expertise, a reviewing court applying the substantial evidence test may [illegible] "displace the Board's choice between two fairly competing views even though the court would justifiably have made a different choice had the matter been before it *de novo*." 390 U.S. at 260 (quoting *Universal Camera Corp.*, 340 U.S. at 488); *see Lorenz Schneider*, 517 F.2d at 452. Upon careful consideration, we find that although there is some evidence to support the Board's determination, it does not constitute substantial evidence *when viewing the record as a whole*.[1] The evidence instead establishes with sufficient certainty that the band leaders are independent contractors who employ the musicians who perform in the bands.

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[1] Although each case involving the determination of employee status necessarily turns upon the particular facts involved, this Court cannot help but take note of the Board's decision in *Associated Musicians of*

Accordingly, the petition for review is granted and the cross-petition for enforcement is denied.

Greater Newark, Local 116, 206 NLRB 581 (1973), *aff'd*, 512 F.2d 991 (D.C. Cir. 1975). In *Local 116*, the Board held that the members of a steadily-engaged lounge orchestra were not employees of the banquet hall restaurant complex in which they performed despite the presence of the following facts which the Board urges us to rely on here: the orchestra performed exclusively at the banquet hall lounge for over four years; the banquet hall's management told the orchestra what types of music not to play; management required the orchestra members to maintain a particular appearance; and the hall controlled the time of performance and forbid certain behavior by orchestra members, such as smoking on stage.

THE LANDMARK U.S.COURT OF APPEALS DECISION.

Involved in this case were 28 hotels in an association. 9 had gambling, 3 hotels and casinos were independent. Despite the following testimony, the U.S. Court of Appeals ruled that the steady engaged musicians were not employees of the hotels and casinos.

1) At times, certain hotels deducted taxes, paid Social Security, Unemployment Insurance and Workmen's Compensation for musicians.

2) Musicians that filed Unemployment Insurance Claims when out of work named hotels as former employers.

3) Musicians received meals at discount or sometimes without charge.

4) Musicians were furnished with I.D. cards.

5) Musicians used employees parking facilities.

6) Certain hotels furnished vacations, sick pay and also paid holidays.

7) Hotels complained about loud volume and too long intermissions between sets.

8) Orchestra leaders changed the style to accomodate the room.

9) When a star required additional musicians to play their orchestrations, certain hotels would send the leader a memo instructing the leader to obtain the extra musicians for the stars and added the cost of the extra musicians to the leader's gross for the leader to pay the extra musicians.

10) The Holiday Inn had three groups who played for three years without interruptions.

11) Hotels would change the hours.

12) One act, a dancing act, had six people dancing and had three musicians of their own who accompanied the dance act. They performed for about a year and four months.

13) Certain house bands played for ten years at the same establishment.

14) When extras such as overtime or doubling on instruments were required, the hotel paid the leader who made the request for additional payments.

15) When the stars required additional musicians,.the hotel relied on the leader to select the extra musicians.

16) Certain hotels assigned groups to other areas and adjusted working schedules.

17) Certain hotels would ask the leader to list his repertoire.

18) Certain hotels would instruct the leader that his musicians are not to drink or smoke on the bandstand.

19) One group played for four years, another six years and another for 3 years.

20) One hotel issued nine rules for musicians.

National Association of Orchestra Leaders

34 Metropolitan Oval, New York, N.Y. 10462 • (212) 863-8997

September 7, 1984

Senator Don Nickles, Chairman
Senate Sub-Committee On Labor and Human Resources
428 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator:

I represent the National Association of Orchestra Leaders (NAOL) whose members since 1959 include 8000 musicians comprising

1) Orchestra leaders (employers of musicians)
2) Partnerships-co-ops (self-employed musical groups)
3) Singles (individual musicians who always perform alone)
4) Contractors (usually a performing member of an orchestra (See Group #1 above who for agreed extra-pay, hires musicians for the involved orchestra leader employer)
5) Supervisors (of musician) within the meaning delineated in the Act.

The basic problems confronting the American Federation of Musicians and its Locals were decided in the following leading cases which among 200 were:

Bartels v Birmingham
(1947) 332 U.S. 126, 67 S.Ct. 1547

Carroll v American Federation of Musicians
295 F.2d 484, 486 (2 Cir. 1961)

Carroll et al v American Federation of Musicians of the U.S. and Can.et al
(C.A. 2, 1967) 372 F. 2d 155

Carroll v. Associated Musicians of Greater New York
183 F. Supp. 636 (S.D. N.Y. 1960]; affirmed 284 F.2d 91

Chicago Federation of Musicians, Local 10, Etc.
153 NLRB 68

Claim of Miller, Appeal of Amigone
(1941) 262 App. Div. 385, 29 N.Y.S. 2d 51

Cutler v. American Federation of Musicians of U.S. & Can.
(C.A. 2, 1963) 316 F.2d 546 cert. den. 375 U.S. 941, 84 S.Ct., 346

Cutler v. United States
(1960) 180 F. Supp. 360

Mark Hopkins Inc. v. Cal. Emp. Etc. Com.
(1948) 86 C.A. 2d 15

Orchestra Leaders v. Musical Society
(U.S.D.C. E.D.PA., 1962) 49 LRRM 3043

People v. Grier
(1942) 53 C.A. Supp. 2d 841, 120 P.2d 207

Williams v U.S.
(C.A. 7, 1942) 126 F. 2d 129

Don Glasser, NATL. Assn. Orch. Ldrs. v AFM
(1966) 165 NLRB 110

Hilton et al v NLRB-AFM LOCAL #468
(1982) 2d Cir. C.A.

Orchestra Leaders v. AFM Local 802
225 NLRB No. 74 - contempt

Orchestra Leaders v AFM Local #802
126 NLRB 29 - Court enforced

My client, in addition, participated in some 200 NLRB cases wherein the Board in the vast majority of these cases, ruled in favor of the Association and also found that orchestra leaders, partnerships, singles were independent contractors.

Since 1964 the AFM has, by ten Bills presented to Congress, vainly sought to reverse some of the leading cases listed above as well as practically all of the 200 NLRB cases referred to above.

In other words, the AFM has, since 1964 tried unsuccessfully to obtain from Congress substantially the same new legislation as it now seeks by S.281 and H.R.5107. More bluntly the AFM stands before Congress as a loser habituated in that role by ten previous failures. They were:

H.R. 11238	May 13, 1964
H.R. 8441	July 20, 1977
H.R. 7401	May 20, 1980
H.R. 7402	May 20, 1980
H.R. 4376	August 4, 1981
H.R. 4377	August 4, 1981
S. 2925	September 8, 1982
H.R. 4377	August 4, 1981
S. 2925	September 17, 1982
H.R. 1758	September 1983
S. 281	September 1983

For the reasons set forth below, we argue that it should continue to fail with respect to S. 281 and H.R. 5107.

Enactment of those two bills would mean (among other things) as Ned H. Guthrie AFM's National Legislative Director admitted in a letter dated February 25, 1983

> "All musicians, including the leader-contractor***will be employees***of the business entity who purchases their services."

Orchestra leaders, co-ops, singles and contractors whom State and Federal Courts recognize as independent contractors become employees.

By the mere magic of new legislation, the meaning of words (established by hundreds of cases since 1959) is radically changed to serve AFM's purposes. What is more important is that the constitutional rights of hundreds of orchestra leader employers, co-ops, singles and contractors-independent contractors are arbitrarily repudiated by the stroke of the legislative pens. Congress after much debate defined or implied the standard legal meaning of words like "employee," "employer" and "independent contractor." By the almost thoughtless device of now changing the means of these words, approved by Congress and the Courts (State and Federal) the AFM presumes to junk long standard meanings to minister to AFM laziness about trying to persuade musicians to join AFM or its locals.

After Representative Thompson introduced H.R.8441, AFM solicited co-sponsorship from Senator Javits. The latter phoned NAOL asking for its views on that Bill. Mr. Peterson wrote to the Senator a 3-page letter with exhibits, explicitating his opposition to H.R.8441 (practically identical with the Bill now under consideration). The Senator, as a result, refused to sponsor the AFM Bill.

One of the arguments used by AFM in its advocacy of S.281 is the mistakenly alleged similarity of S.281 with the exceptions written into the Act representing the construction and the garment industries. Mere reading of the relevant part of the Act (Section "(e)") dispels the alleged similarity. Further to equate the music industry with the construction and garment trades and industry is utter nonsense because construction and garment trade unions (unlike the AFM whose members comprise for the most a) orchestra leader employers; b) music contractors; c) supervisors; d) groups that are equal partners and e) singles-all independent contractors) do not have as members, independent contractors such as that we describe above, i.e. employers, contractors, supervisors, partnerships.

Further, the AFM in an admission against its interests, admits that the intent of these Bills is to change the status of their member independent contractors and non-member independent contractors to that of employees, for Page 4 of each Bill asks that

> "any individual having the status of an independent
> contractor who is engaged to perform musical services
> shall be included in the term, 'employee'."

This Association is not alone in our efforts to combat this self-serving union plea for special privileges. The following National Associations also voice their opposition to S.281 and H.R.5107 and are presenting their opposition papers to the Committee within the next two weeks. Opposing Associations include:

The American Hotel and Motel Association,
The National Licensed Beverage Association,
The National Restaurant Association,
The International Theatrical Agents Association,
The Right To Work Committee,
The Outdoor Amusement Buisness Association
The National Ballroom and Entertainment Association,
The American Motel Inns Inc.,
The American Association of Clubs,
The Conference of Personal Managers,
The Allied Musicians' Union,
The American Musicians' Union

There will be a large number of State and Regional Associations that will be submitting opposing position papers.

The proponents of the bills, the present and the past ill-fated bills, when testifying before the House Labor-Management Relations Sub-Committee in H.R. 8441, said among other things, that the industry as "been attacked by***confused Labor Board Investigators."

The Musicians' Union was not alone in its criticism of the National Labor Relations Board, particularly the General Counsel and his staff. The National Association of Orchestra Leaders when attempting to compel the then General Counsel, Mr. William A. Lubbers to follow the rules as they concern charges filed against the parent AFM and its many locals, his Associates advised that we should not file too many charges and "give the union a chance to straighten up its act." Despite the fact that charges have been held in abeyance in Mr. Lubbers' office, as long as three years, we argued then with Mr. Lubbers' associates, that they were providing special and unusual relief to the Musicians' Union whenever they "plea bargain."

One incident stands out and that is at the time Region #29 recommended criminal contempt and was about to proceed to enforce contempt. But Mr.Lubbers ordered the entire file to be sent to his office who then permitted the _President_, the Secretary and Treasurer of the AFM's largest local, that local's attorney and the parent's attorney to visit Washington and "plea bargain" which was granted. Our request to visit Washington was denied. The result? _An informal Settlement._. Time and time again Mr. Lubbers and his associates have laid out the "red carpet"for the Musicians' Union's officials and their attorneys. As recent as May of this year, the attorney representing a west coast local was invited to the General Counsel's office to discuss a charge that this Association filed. This Association was not so invited. The Association advises that its files showing that Mr. Lubbers and his Associates have violated the rules in many instances.

Then, the most flagrant abuse by the General Counsel and his Associates resulted in a Settlement favorable to the union despite the fact that complaints were issued in 50 cases, consolidated, hearing dates were set throughout various principal cities. Mr. Raymond Green, Attorney Region #2, New York was assigned to try these consolidated cases nationwide. However, before Mr. Green and a member of the Association were to travel to the various cities where the hearings would be held, the General Counsel ordered the complete file sent to Washington and after months of delay, refused to issue complaints but rather over our objections, issued a "Settlement Agreement" later called an "understanding," to which the Association refused to be a party.

These are merely some of the instances where the Association can show that there was something amiss in the General Counsel's office.

At the appropriate time, NAOL will be prepared to offer these files for the consideration of the Committee.

Respectfully submitted,

Godfrey P. Schmidt

GODFREY P. SCHMIDT
Counsel NAOL

GPS/ac

IMPORTANT EXCERPTS FROM THE AFM LETTER

"All musicians including the leader-contractor even in the club date business, will be employees of the person or business entity who purchases their services."

"Band leaders-contractors would, for labor law purposes like their sidemen, be employees of the purchaser of music services on a club date or any other type engagement."

"On a typical casual engagement (club date) the father of the bride or the chairman of the ball is the purchaser of the musicians' services, he will be the employer***of all the musicians including the leader-contractor***."

"And it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as it relates to our business. You will recall that our old Form B contract for all engagements, identified the purchaser as the employer of the musicians including the leader-contractor and had a statement at the bottom, that the contract did not determine who was responsible for IRS and State Employment Taxes."

"You mention that the Taft-Hartley law***prohibits leaders from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue as leader-contractors would, for labor law purposes only, become employees."

AMERICAN FEDERATION OF MUSICIANS
OF THE UNITED STATES AND CANADA
AFFILIATED WITH THE A.F.L.-C.I.O.
REGISTERED

Ned H. Guthrie
National Legislative Director
1562 Kanawha Boulevard, Eas
Charleston, WV 25311
(304) 345-7300

February 25, 1983

Don Russell
Don Russell Orchestras
The Boston Park Plaza Hotel
50 Park Plaza
Boston, Massachusetts 02117

Dear Mr. Russell:

Thank you for yours of January 26, 1983.

I am pleased to note your interest in our proposed amendments to the Taft-Hartley Act.

My responses to your questions in that letter are as follows:

All musicians, including the leader-contractor, even in the club date business, will be employees - FOR LABOR LAW PURPOSES ONLY - of the person or business entity who purchases their services. Please note that the proposed amendments are to the Taft-Hartley Act only, and that law pertains only to Labor-Management relations. Thus, it has no bearing on rulings of the Internal Revenue Service as to who may or may not be an employer or employee for tax purposes. Historically, the Internal Revenue Service has held that the typical club date band leader is the employer of his sidemen musicians, or in some cases his sidemen are independent contractors. Our proposed amendments would in no way affect those relationships for tax purposes.

Band leaders-contractors could still be members of the Union, as they would for Labor Law purposes, like their sidemen, be employees of the purchaser of the musical services on a club date, or any other type engagement.

On a typical casual engagement (club date) the father of the bride, or the chairman of the ball is the purchaser of the musician's services, he will be the employer - FOR LABOR LAW PURPOSES ONLY - of all the musicians, including the leader-contractor. This does not present any objectionable situation for the father of the the bride, or chairman of the ball, and it is exactly the way our business was conducted for many, many years prior to the recent application of certain provisions of the Taft-Hartley Act as they relate to our business. You will recall that our old Form B Contracts for all engagements, identified the purchaser as the employer of the musicians, including the leader-contractor, and had a statement at the bottom that the contract did not determine who was responsible for IRS and State employment tax purposes.

You mention that Taft-Hartley Law specifically stating that employers cannot belong to unions. For the record: Nowhere in the Act is this stated, and the Courts have held that employers can, if they so desire, be members of labor unions which represent their employees, but the Act prohibits them from exercising certain kinds of influence over the affairs of the union. Our amendments would of course eliminate this now confusing issue, as leader-contractors would - FOR LABOR LAW PURPOSES ONLY - become employees.

We cannot conceive of any reason why a legitimate leader-contractor would not be better off were our amendments passed than he is now under the chaos that exists as to the employer-employee relationships for Labor Law purposes. If a member leader-contractor becomes an employee of the purchaser, as in the past, the AFM and its locals will again be able to protect his interests fully as well as those of his sidemen. The current position of the National Labor Relations Board that a leader-contractor is an independent contractor has severely limited our union in protecting the interests of our many members who function as leader-contractors.

I trust the above answers your questions, if not; please do not hesitate to contact me further in the matter. We sincerely solicit your support of our amendments which will bring order out of chaos in the music business, and benefit all musicians: Leader-contractors and sidemen.

Fraternally,

Ned H. Guthrie
National Legislative Director
American Federation of Musicians

NHG/arw

cc: Joe MacDonald, President
Local 9-535

National Association of Orchestra Leaders

34 Metropolitan Oval, New York, N.Y. 10462 • (212) 863-8997

BULLETIN!!!

RE: AMERICAN FEDERATION OF MUSICIANS' ATTEMPT TO CHANGE LABOR LAWS.

Senator Randolph (D)W. Va. and Congressman Clay (D)Mo., on behalf of the American Federation of Musicians (AFofM) sponsored two bills in Congress, S.281 and H.R.1758 that if adopted a) would change the status of orchestra leaders, contractors, groups that are equal partners co-ops and singles, all of whom are independent contractors, to that of employees and b) would designate all purchasers of music as the employers of musicians.

These bills if passed, would reverse our 15 year successful struggle with the AFofM using the National Labor Relations Board and the Federal Courts which not only granted musicians freedom to pursue their musical careers without being forced into union membership, but also provided freedom for all purchasers of music to contract for the services of musicians who are not members of the union. Putting it another way, if these bills are passed, all musicians would be "employees" of whomever they perform for and all purchasers of music would be called "employers" and as employers would be compelled to 1) withhold taxes; 2) make Unemployment Insurance payments; 3) make Social Security payments; 4) cover musicians with compensation and 5) such purchasers would be held libel for the conduct of musicians. Purchasers are only libel for employees such as waiters, waitresses, bartenders,kitchen help and others.

On the following pages you will find copies of a booklet issued by the National Labor Relations Board wherein I have separated the language in two sections and inserted with our underscoring, the exact print from the bills sponsored by Senator Randolph and Congressman Clay.

All of the above I call to your attention with the suggestion that you assist us in our plans to make certain that these bills do not come out of Committee for hearing and vote. I further suggest you refer this subject to your attorney.

I would appreciate your response to this important Bulletin.

(PLEASE TURN)

Sincerely,

Chas Peterson

CHARLES PETERSON, Treasurer

cp/ac

Text of Labor-Management Relations Act, 1947, as Amended by Public Laws 86-257, 1959,* and 93-360, 1974**

[Public Law 101—80th Congress]

AN ACT

lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

Sec. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, who is the purchaser of musical performance services regardless of whether the performer of such services is, himself, an independent contractor, employer, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof,* or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

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* Pursuant to Public Law 93-360, 93d Cong., S. 3203, 88 Stat. 395, Sec. 2(2) is amended by deleting the phrase "or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual."

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, who is engaged to perform musical services shall be included in the term ‘employee’ ”.

or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction

NLRB IMPROPRIETIES AS THEY AFFECT THE NATIONAL ASSOCIATION OF ORCHESTRA LEADERS

1) Following the 1979 "understanding." Mr. Friedman of Advice Section when advised that the union violated the "understanding" asked if I would do him a favor and accept a Settlement Agreement rather than a Board order since the union violated the Settlement Agreement.

2) Each and every time the union finds that the "understanding" (agreement) should include certain provisions, they treck back to the General Counsel suggesting changes in the Settlement which were granted on several occasions.

3) In several cases, the AFM attorneys again requested modification of the Settlement Agreement which was granted.

4) Complaint remedy warranted and suggested by Region 29 was refused by Advice.

5) Advice suggested and approved Booking Agent Manager Agreement.

6) Advice made suggestions and approved Musicians' Union for of contracts C-1 and C-P-1.

7) Advice ordered Region 4 not to issue complaint when facts warranted the issue.

8) Advice Section refused to issue complaint within the time limit despite union proclivity.

9) Advice approved a union form of contract mandated by the union wherein Advice agreed that only the AFM, the parent body could arbitrate contract disputs despite cited cases.

10) All Region 31 cases, ten sent to Advise. One of the ten charges against the AFM, the parent body, was held at Advice Section although the others were processed. When I asked Mr. Datz why that one case was singled out and held at Advice Section for a three year period, he said "leave the room."

11) Mr. Parlier met with me on several occasions and asked if I wished any imput in the form contract that the union issues for its members to use when contracting for music. I advised that it was not the business of Advice Section to assist the union in drafting its form of contract.

12) Advice did not hold a local in violation of Section 10 of the Settlement despite the fact that the local has shown a proclivity to violate the Act.

13) Advice did not order the musicians' employees to be made whole.

14) When I challenged Advice concerning their attempt to help the union draft a new form of contract only the union can arbitrate disputes, I asked if this was the usual function of Advice. The answer was no.

15) Recently as a result of a charge filed by this Association a complaint issued but when the parent AFM learned of the charge, it managed to have the hearing date set aside and the entire file including the complaint was sent to Advice.

All of the above and more were the result of a fifteen year problem getting Advice to follow its rules and a) go for contempt which were warranted; b) cause Board orders to be Court enforced; c) Issue formal agreements and settlement agreements despite the record in each case warranted such conclusions.

Various Regions have advised that in all of these matters, the General Counsel (Advice) was not following the rules. Many visits to Advice Section serves no useful purpose. The few times I was asked to appear at Advice Section, it was simply to assist Advice Section in drafting a Settlement that would not effectuate the policies of the Act and provided unusual relief to the Musicians' Union.

Senator NICKLES. I can tell you are well versed on this subject. As a matter of fact, there are several groups who requested to testify in opposition to the bill, but your involvement seems to be as longstanding as any.

Just as a practical matter, what in your opinion would happen to the industry if this bill did become law?

Mr. SCHMIDT. Well, I think it would be back to the disorder that occurred when their myth that the purchaser of the music was the employer was rampant, because nobody really believes, I can hardly think that anybody really believes that the purchaser of the music is actually the employer of single engagement bands.

Now, let's take steady engagement bands. I know from the way the hotels in Puerto Rico operated that they consulted people who were expert on which are the best orchestras, and they followed their advice and hired the orchestra leader involved and signed a contract with that orchestra leader, and they never exercised at any time any direction over the conduct and the working of an orchestra.

Senator NICKLES. Generally speaking, and I want to go a little bit further than just orchestras, do most hotels, motels, and nightclubs, when making a contract with a band leader or orchestra leader say, "We will pay you so much per night," and then the orchestra leader or the band leader works it out and compensates his employees?

Mr. SCHMIDT. I would say most of them do, and the band leader then decides what wages to pay. Now, I am sure, since they are human beings, some of them were very greedy and left their musician employees pretty much to their own devices, but I think most orchestra leaders that I have met, and I have represented almost every one of the famous orchestra leaders, were people who had a real sympathy with their workers, with their musicians, and therefore, they did not take advantage of them.

Senator NICKLES. Are there some cases you can think of where hotel and nightclub owners negotiate directly with the musicians and bypass an orchestra leader?

Mr. SCHMIDT. Yes. All of those hotels which took as gospel the form B contract, which said that the purchaser of the music is the employer of the musicians, did that out of ignorance of what the legal right was in that connection, and I think one of the great defects of the bill before you gentlemen is the fact that the orchestra leader is actually, and I think unconstitutionally, deprived of his right to be an employer. He is suddenly by a stroke of the legislative pen here repudiated as an employer.

Senator NICKLES. If this bill would pass?

Mr. SCHMIDT. That is right, if it would pass.

Senator NICKLES. The Taft-Hartley Act permits musicians as employees, to organize and sign collective bargaining agreements; is that correct?

Mr. SCHMIDT. Oh, yes, and as a matter of fact, that was one of my main arguments when I got the first labor contract in the history of this union from local No. 802, and we have had it ever since.

Senator NICKLES. Do you think the real problem is the fact that the majority of today's musicians are really independent contractors and not employees in the traditional sense of employee of the hotel?

Mr. SCHMIDT. Yes; I think so because something has happened in the industry that is not generally known. That is large numbers of musicians have elected to be co-ops, as they call them. That is to say whole bands form a partnership and agree on the division of their income at that point, but each one is now an independent contractor, and the partnership runs the band.

Senator NICKLES. Gentlemen, thank you very much. I expect Senator Randolph to submit additional questions to you.

Mr. Peterson, do you have a comment to make?

Mr. PETERSON. Yes. My name is Charles Peterson. I am the treasurer of the National Association of Orchestra Leaders, and with Mr. Schmidt, we have been attempting to correct unlawful activities of this union since 1959, but I want to comment on a statement made today by reading from a letter issued by the legislative assistant for the musicians union who had everything to do with sponsoring the bill, and I quote from the letter.

> All musicians, including leader-contractors, even in the club date business will be employees. Band leaders can still be members of the union, but like their sidemen, be employees of the purchaser.

Now, that is one matter. The other subject is this. On the matter of the form B contract, through our efforts the NLRB compelled local No. 802 to withdraw the form contract that designated the purchaser as the employer, and together with the assistance of the advice section of the National Labor Relations Board, Mr. Lubbers, together with his associates, Harold Gatz, associate general counsel, and Frank Polia, suggested an unusual form of contract called a C–1 form, which, like the old form, called for only the union to arbitrate disputes.

Well, we took care of that with Bill Graham on the coast who challenged that arbitration clause that permits only the union to act as judge, jury, and Supreme Court, and from the appeals court right through to the California Supreme Court. There the courts held that the union cannot arbitrate such contract disputes, quoting many citations right through to the Supreme Court.

Senator NICKLES. Do you have a comment, Mr. Davis?

Mr. DAVIS. A very brief comment.

I think it is terribly important to note the statement was made before by the union witness that the multitude of the musicians in this country, professional musicians, are members of the AFM. It is totally the reverse of that.

The industry has changed completely over the years. At one time the establishments had house bands, and that was the rule. But today 90 percent, and this is a provable figure by the Theatrical Agents Association, the National Orchestra Leaders Association, the Ballroom Association, 90 percent of the working musicians in this country today are all contemporary music players. That is what fills our industry today. A small minority are the Glen Miller type of musicians, in the wedding type of business. It is the lounge business, the concert business, the college business. That is where the multitude of the business is, and these young musicians who comprise 90 percent of the working musicians in this country today do not wish to belong to the AFM. They want no part of work dues, of travel taxes, or fines for infractions of a myriad of rules. The young musician's mind does not think that way. They do not want to go into a lounge and have to worry about how much intermission they have taken or how much they are going to have to charge the house for playing over a period of time or whether it is an A room, B room or C room, and all of these musicians make their living by working in these low budget rooms. Their managers or their agents negotiate the contracts with them, and they are able to work because they are able to make a deal.

If the room has a capacity of 100 seats, the room can only pay so much in one night, and that is the limit of the budget. So, if a band wants to work in that room, they have to be able to work within the budget.

Now, if the union comes in and is able to put picket lines around restaurants, catering houses, country clubs, the thousands upon thousands of lounges like that, then all of these young musicians are not going to be able to work, and these young musicians, as I repeat, comprise 90 percent of the working musicians in this country, and that is a provable figure, and they do not wish to belong to the AFM. They think of the AFM as a dues-collecting, money-extracting smaller group of oldtimers in this business. This is what the young musicians believe.

Senator **Nickles**. Thank you.

Mr. **Davis**. That is a true statistic. They do not want to belong to the AFM, and they do not want to be forced to by having the house picketed if the house does not comply with the union rules.

Senator **Nickles**. Thank you very much.

Our next panelist is A.J. Takacs, vice president of government and public affairs, Whirlpool Corp.

STATEMENT OF A.J. TAKACS, VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, WHIRLPOOL CORP., ACCOMPANIED BY ROBERT BARTLEY, DIVISION VICE PRESIDENT

Mr. **Takacs**. Thank you, Senator.

With me today is Bob Bartley, the division vice president of our Evansville division, and he will start out with just a couple of minutes of comments, and then I will conclude with a couple more.

Senator **Nickles**. All right.

Mr. **Bartley**. Good morning. My name is Robert Bartley, and I am division vice president of Whirlpool Corp.'s Evansville, IN, manufacturing division.

For the next few minutes, I will summarize some major highlights relating to our company's recent experience in labor contract negotiations at our Evansville plant. I hope my review will enable you to more fully appreciate why we strongly feel the need for secret ballot voting as a mandatory step for contract ratification or work stoppages.

Although my account begins in 1970, work stoppages at Evansville have occurred, with only two exceptions, every 3 years since the company began operating that division in 1955. The exceptions were contract years 1977–80, years when general economic conditions were sufficient incentives to avoid work stoppages. The year

1970 ushered in a new era of record length work stoppages at Evansville. Prior to that, the longest stoppage we can document lasted 15 working days. The shortest lasted 3 days.

Since 1970, however, the average length mushroomed to over 81 working days per strike for each of the three work stoppages. We believe that use of the secret ballot could have shortened or even avoided these work stoppages and hastened the contract ratification process at Evansville. We also believe that it is the preferred voting method by the union's membership. Let me illustrate.

In 1970, union leaders recommended that the membership reject the latest company proposal and strike the plant. The strike vote that followed was by stand up, a method which forces the members to cast their vote publicly and expose the dissenters to possible ridicule and intimidation. Four days later, the Evansville Courier newspaper reported that some employees were considering demanding the union leadership to hold a secret ballot vote.

Two months into the strike, the same newspaper quoted one employee who said, "If we had had a secret ballot at the start, we would have never struck."

This view was shared by others, as union members had collected 200 names calling for a secret ballot. However, they abandoned their cause after allegedly receiving personal threats. Finally on the 110th day of the strike, members voted to ratify the contract, but by the turnstile voting method.

Conditions surrounding the labor dispute in 1974 varied little from those in 1970-71. Several union members calling for the secret ballot were prevented from raising the issue when the leadership abruptly adjourned the meeting once supporters tried to introduce the motion.

One of the backers of the motion had his shirt torn off. His father was hit in the jaw. On the 122d day of the strike, the membership voted, again by turnstile, to accept the company's offer.

The controversy attending the stand-up and turnstile voting methods used in earlier disputes affected the labor contract last year, 1983, as well. On the very first vote on whether to accept the company's offer, it was discovered that two turnstiles used for the "accept" gates were set in backwards. There were also reports of spinning the "no" turnstile and of a group of union members opposed to contract ratification intimidating and threatening those going through the turnstile for acceptance of the contract.

As in previous contract negotiations, the company asked the union to hold a secret ballot. Its leadership continued to refuse. The public opinion, particularly the print media, and the union's own membership were becoming more vocal in their support of the secret ballot. Although the final vote to accept the company's offer was by turnstile, subsequent media and increasing membership pressure for the secret ballot finally succeeded.

A month into the 1983 contract, the union voted to amend its bylaws to call for secret ballot votes on future contract offers. In spite of the new secret ballot procedure recently adopted, there is absolutely no insurance that it will not be changed in the future.

The abuses attendant to the undemocratic voting procedures I have described serve no one's interest. Our customers' supply of products is interrupted. As a result, we have lost a sizable portion of our refrigeration business to our competition. State government forgoes both sales and income tax revenues when employees are not working. Our vendors experience a decline in business volume. Local merchants forgo needed business dollars, and perhaps of even greater importance, employees and their families feel the immediate effect when paychecks stop.

During the three work stoppages between 1970 and 1983, we estimate the total amount of lost wages to employees to have exceeded $63 million. This says nothing of lost business dollars to local merchants, the division suppliers, or lost State income tax revenues.

The unpredictability of the labor climate in Evansville, which we attribute in great part to the union's current voting practices, has compelled us to move production of room air-conditioners, dehumidifiers and some refrigerator models out of Evansville to other Whirlpool plants.

As a result, the number of Evansville jobs has shrunk from a 1970 high of over 9,000 to approximately 3,000 today. We believe that today's level could be stabilized and hopefully increased by use of the secret ballot.

Andy Takacs will now describe our secret ballot proposal in more detail.

Mr. TAKACS. In support of Mr. Bartley's factual anatomy of a strike, we offer the following remedy, which we call "The Employee Right to Vote Act of 1984." The premise is fundamental to Americans: The right of a secret ballot.

Free of possible coercion or intimidation, employees are entitled to clearly express their opinions on matters dealing with work stoppages or contractual disagreements. This proposed democratic approach to free expression should accurately serve a labor union's interest in its members' preferences, while at the same time furnishing the employer with the candid sentiment for or against its contract offer.

In our written statement accompanying this, we provide the detailed language that would achieve this purpose.

In summary, we are proposing a method to obtain a secret ballot election on whether or not organized employees want to strike or continue a strike. We propose using existing Federal labor law mechanisms by amending three sections of the National Labor Relations Act, section 8(b), which lists unfair labor practices; section 9, which gives the NLRB authority to conduct secret ballot elections in representation questions; and section 10(l), which requires the Board to seek injunctions when certain unfair labor practices are alleged.

Our proposal to amend section 8(b) attempts to strengthen the secret ballot requirement by adding a new unfair labor practice to the list because the secret ballot in itself will not curtail unrepresentative strikes if a union can continue a strike with impunity.

To address the question whether the unfair labor practice procedure in itself may not be effective, our proposal also amends section 10(l) to require the Board to seek an injunction against the strike if the new section 8(b)(8) is being violated.

Other amendments in section 9(i) spell out who may file a petition and the time period limitations.

We thank you for this opportunity to reflect on our experiences in the absence of the secret ballot and also to propose this particular remedy.

[The prepared statement of Mr. Takacs and additional material supplied for the record follow:]

WHIRLPOOL CORPORATION

STATEMENT

* * *

Oversight Hearings

of

U.S. Senate Labor Subcommittee

Regarding

Taft-Hartley Act and Railway Labor Act

on

Thursday, September 13, 1984

* * *

A. J. Takacs
Vice President,
Government & Public Affairs

Robert Bartley
Division Vice President
Evansville Division

Whirlpool Corporation
Benton Harbor, Michigan 49022
616/926-3219

GOOD MORNING. MY NAME IS ROBERT BARTLEY, AND I'M DIVISION VICE PRESIDENT OF WHIRLPOOL CORPORATION'S EVANSVILLE, INDIANA, MANUFACTURING DIVISION. FOR THE NEXT FEW MINUTES, I'LL REVIEW SOME MAJOR HIGHLIGHTS RELATING TO OUR COMPANY'S RECENT EXPERIENCE IN LABOR CONTRACT NEGOTIATIONS AT OUR EVANSVILLE PLANT. I HOPE MY REVIEW WILL ENABLE YOU TO MORE FULLY APPRECIATE WHY WE STRONGLY FEEL THE NEED FOR SECRET BALLOT VOTING AS A MANDATORY STEP FOR CONTRACT RATIFICATION OR WORK STOPPAGES.

ALTHOUGH MY ACCOUNT BEGINS IN 1970, WORK STOPPAGES AT EVANSVILLE HAVE OCCURRED, WITH ONLY TWO EXCEPTIONS, EVERY THREE YEARS SINCE THE COMPANY BEGAN OPERATING THAT DIVISION IN 1955. THE EXCEPTIONS WERE CONTRACT YEARS 1977 AND 1980 -- YEARS WHEN GENERAL ECONOMIC CONDITIONS WERE SUFFICIENT INCENTIVES TO AVOID WORK STOPPAGES.

THE YEAR 1970 USHERED IN A NEW ERA OF RECORD LENGTH WORK STOPPAGES AT EVANSVILLE. PRIOR TO THAT, THE LONGEST STOPPAGE WE CAN DOCUMENT LASTED 15 WORKING DAYS. THE SHORTEST LASTED THREE DAYS. SINCE 1970, HOWEVER, THE AVERAGE LENGTH MUSHROOMED TO OVER 81 WORKING DAYS PER STRIKE FOR EACH OF THE THREE WORK STOPPAGES.

WE BELIEVE THAT USE OF THE SECRET BALLOT COULD HAVE SHORTENED OR EVEN AVOIDED THESE WORK STOPPAGES AND HASTENED THE CONTRACT RATIFICATION PROCESS AT EVANSVILLE. WE ALSO BELIEVE IT IS THE PREFERRED VOTING METHOD BY THE UNION'S MEMBERSHIP. LET ME ILLUSTRATE.

IN 1970, UNION LEADERS RECOMMENDED THAT THE MEMBERSHIP REJECT THE LATEST COMPANY PROPOSAL AND STRIKE THE PLANT. THE STRIKE VOTE THAT FOLLOWED WAS BY STAND-UP, A METHOD WHICH FORCES MEMBERS TO CAST THEIR VOTE PUBLICLY AND EXPOSES DISSENTERS TO POSSIBLE RIDICULE AND INTIMIDATION. FOUR DAYS LATER, THE EVANSVILLE COURIER NEWSPAPER REPORTED THAT SOME EMPLOYEES WERE CONSIDERING DEMANDING THE UNION LEADERSHIP TO HOLD A SECRET BALLOT VOTE. TWO MONTHS INTO THE STRIKE, THE SAME NEWSPAPER QUOTED ONE EMPLOYEE WHO SAID: "IF WE'D HAD A SECRET BALLOT AT THE START WE WOULD HAVE NEVER STRUCK." THIS VIEW WAS SHARED BY OTHERS, AS UNION MEMBERS HAD COLLECTED 200 NAMES CALLING FOR A SECRET BALLOT. HOWEVER, THEY ABANDONED THEIR CAUSE AFTER ALLEGEDLY RECEIVING PERSONAL THREATS. FINALLY, ON THE 110TH DAY OF THE STRIKE, MEMBERS VOTED TO RATIFY THE CONTRACT -- BUT BY THE TURNSTILE VOTING METHOD.

CONDITIONS SURROUNDING THE LABOR DISPUTE IN 1974 VARIED LITTLE FROM THOSE IN 1970-1971. SEVERAL UNION MEMBERS CALLING FOR THE SECRET BALLOT WERE PREVENTED FROM RAISING

THE ISSUE WHEN THE LEADERSHIP ABRUPTLY ADJOURNED THE MEETING ONCE SUPPORTERS TRIED TO INTRODUCE THE MOTION. ONE OF THE BACKERS OF THE MOTION HAD HIS SHIRT TORN OFF. HIS FATHER WAS HIT IN THE JAW. ON THE 122ND DAY OF THE STRIKE, THE MEMBERSHIP VOTED -- AGAIN BY TURNSTILE -- TO ACCEPT THE COMPANY'S OFFER.

THE CONTROVERSY ATTENDING THE STAND-UP AND TURNSTILE VOTING METHODS USED IN EARLIER DISPUTES AFFECTED THE LABOR CONTRACT IN 1983 AS WELL. ON THE VERY FIRST VOTE ON WHETHER TO ACCEPT THE COMPANY'S OFFER, IT WAS DISCOVERED THAT TWO TURNSTILES USED FOR THE "ACCEPT" GATES WERE SET IN BACKWARDS. THERE WERE ALSO REPORTS OF PERSONS SPINNING THE "NO" TURNSTILE AND OF A GROUP OF UNION MEMBERS OPPOSED TO CONTRACT RATIFICATION INTIMIDATING AND THREATENING THOSE GOING THROUGH THE TURNSTILE FOR ACCEPTANCE OF THE CONTRACT.

AS IN PREVIOUS CONTRACT NEGOTIATIONS, THE COMPANY ASKED THE UNION TO HOLD A SECRET BALLOT. ITS LEADERSHIP CONTINUED TO REFUSE. BUT PUBLIC OPINION (PARTICULARLY THE PRINT MEDIA) AND THE UNION'S OWN MEMBERSHIP WERE BECOMING MORE VOCAL IN THEIR SUPPORT OF THE SECRET BALLOT. ALTHOUGH THE FINAL VOTE TO ACCEPT THE COMPANY'S OFFER WAS BY TURNSTILE, SUBSEQUENT MEDIA AND INCREASING MEMBERSHIP PRESSURE FOR THE SECRET BALLOT FINALLY

SUCCEEDED. A MONTH INTO THE NEW 1983 CONTRACT THE UNION VOTED TO AMEND ITS BYLAWS TO CALL FOR SECRET BALLOT VOTES ON FUTURE CONTRACT OFFERS. IN SPITE OF THE NEW SECRET BALLOT PROCEDURE RECENTLY ADOPTED, THERE IS NO ASSURANCE THAT IT WILL NOT BE CHANGED IN THE FUTURE.

THE ABUSES ATTENDANT TO THE UNDEMOCRATIC VOTING PROCEDURES I'VE DESCRIBED SERVE NO ONE'S INTERESTS:

o OUR CUSTOMERS' SUPPLY OF PRODUCTS IS INTERRUPTED. AS A RESULT, WE HAVE LOST A SIZABLE PORTION OF OUR REFRIGERATION BUSINESS TO OUR COMPETITION.

o STATE GOVERNMENT FOREGOES BOTH SALES AND INCOME TAX REVENUES WHEN EMPLOYEES ARE NOT WORKING.

o OUR VENDORS EXPERIENCE A DECLINE IN BUSINESS VOLUME.

o LOCAL MERCHANTS FOREGO NEEDED BUSINESS DOLLARS.

o PERHAPS OF EVEN GREATER IMPORTANCE, EMPLOYEES AND THEIR FAMILIES FEEL THE IMMEDIATE EFFECT WHEN PAYCHECKS STOP.

DURING THE THREE WORK STOPPAGES BETWEEN 1970 AND 1983, WE ESTIMATE THE TOTAL AMOUNT OF LOST WAGES TO EMPLOYEES TO HAVE EXCEEDED $63 MILLION. THIS SAYS NOTHING OF LOST

BUSINESS DOLLARS TO LOCAL MERCHANTS ... THE DIVISION'S SUPPLIERS ... OR LOST STATE INCOME TAX REVENUES.

THE UNPREDICTABILITY OF THE LABOR CLIMATE IN EVANSVILLE -- WHICH WE ATTRIBUTE IN GREAT PART TO THE UNION'S CURRENT VOTING PRACTICES -- HAS COMPELLED US TO MOVE PRODUCTION OF ROOM AIR CONDITIONERS, DEHUMIDIFIERS, AND SOME REFRIGERATOR MODELS OUT OF EVANSVILLE TO OTHER WHIRLPOOL PLANTS. AS A RESULT, THE NUMBER OF EVANSVILLE JOBS HAS SHRUNK FROM A 1970 HIGH OF OVER 9,000 TO APPROXIMATELY 3,000 TODAY. WE BELIEVE THAT TODAY'S LEVEL COULD BE STABILIZED, AND HOPEFULLY INCREASED, BY USE OF THE SECRET BALLOT.

ANDY TAKACS WILL NOW DESCRIBE OUR SECRET BALLOT PROPOSAL IN MORE DETAIL.

(I'M ANDY TAKACS, ALSO OF WHIRLPOOL CORPORATION):

IN SUPPORT OF MR. SIMECK'S FACTUAL ANATOMY OF A STRIKE, WE OFFER THE FOLLOWING REMEDY ... WHICH WE CALL THE "EMPLOYEE RIGHT TO VOTE ACT OF 1984."

THE PREMISE IS FUNDAMENTAL TO AMERICANS: THE RIGHT OF A SECRET BALLOT. FREE OF POSSIBLE COERCION OR INTIMIDATION, EMPLOYEES ARE ENTITLED TO CLEARLY EXPRESS THEIR OPINIONS ON MATTERS DEALING WITH WORK STOPPAGES OR CONTRACTUAL DISAGREEMENTS. THIS PROPOSED DEMOCRATIC APPROACH TO FREE EXPRESSION SHOULD ACCURATELY SERVE A LABOR ORGANIZATION'S INTEREST IN ITS MEMBERS PREFERENCES; WHILE AT THE SAME TIME FURNISHING THE EMPLOYER WITH THE CANDID SENTIMENT FOR OR AGAINST ITS CONTRACT OFFER.

IN OUR WRITTEN STATEMENT, WE PROVIDE THE DETAILED LANGUAGE THAT WOULD ACHIEVE THIS PURPOSE.

IN SUMMARY, WE ARE PROPOSING A METHOD TO OBTAIN A SECRET BALLOT ELECTION ON WHETHER OR NOT ORGANIZED EMPLOYEES WANT TO STRIKE, OR CONTINUE A STRIKE.

WE PROPOSE USING EXISTING FEDERAL LABOR LAW MECHANISMS, BY AMENDING THREE SECTIONS OF THE NATIONAL LABOR RELATIONS ACT: SECTION 8(B), WHICH LISTS UNFAIR LABOR PRACTICES; SECTION 9, WHICH GIVES THE NLRB AUTHORITY TO CONDUCT SECRET BALLOT ELECTIONS FOR REPRESENTATION QUESTIONS; AND SECTION 10(L), WHICH REQUIRES THE BOARD TO SEEK INJUNCTIONS WHEN CERTAIN UNFAIR LABOR PRACTICES ARE ALLEGED.

OUR PROPOSAL TO AMEND SECTION 8(B) ATTEMPTS TO STRENGTHEN THE SECRET BALLOT REQUIREMENT BY ADDING A NEW UNFAIR LABOR PRACTICE TO THE LIST --- BECAUSE THE SECRET BALLOT IN ITSELF WILL NOT CURTAIL UNREPRESENTATIVE STRIKES IF A UNION CAN CONTINUE A STRIKE WITH IMPUNITY. TO ADDRESS THE QUESTION WHETHER THE UNFAIR LABOR PRACTICE PROCEDURE IN ITSELF MAY NOT BE EFFECTIVE, OUR PROPOSAL ALSO AMENDS SECTION 10(L) TO REQUIRE THE BOARD TO SEEK AN INJUNCTION AGAINST THE STRIKE IF THE NEW SECTION 8(B)(8) IS BEING VIOLATED.

OTHER AMENDMENTS IN SECTION 9(I) SPELL OUT WHO MAY FILE A PETITION, AND THE TIME PERIOD LIMITATIONS.

WE THANK YOU FOR THIS OPPORTUNITY TO REFLECT ON OUR EXPERIENCES IN THE ABSENCE OF THE SECRET BALLOT; AND ALSO TO PROPOSE THIS REMEDY.

EMPLOYEE RIGHT TO VOTE ACT

Purpose of proposed bill:

Provide a method for various interested parties (Union, employer, employees, Federal Mediation) to obtain a secret ballot election on the question of whether or not organized employees desire to strike or continue a strike.

Rationale for the method adopted:

The attempt was to utilize an existing federal labor law mechanism to provide the secret ballot. This would promote familiarity with the concept and can be considered a moderate change in existing law.

How the method works:

1. Summary

The bill amends three main sections of the National Labor Relations Act, as amended: Section 8(b), which lists Union unfair labor practices; Section 9, which gives the National Labor Relations Board authority to conduct secret ballot elections for representation questions; and Section 10(l), which requires the Board to seek injunctions when certain unfair labor practices are alleged.

Adoption of the Board's existing election machinery permits use of a ready made procedure with a long history of precedent. Although not all aspects of representation elections would be applicable, the Board could select those portions which would be useful.

The proposal to amend Section 8(b) to add a new Union unfair labor practice attempts to put some teeth into the secret ballot requirement. Resort to the secret ballot will not accomplish the task of curtailing unrepresentative strikes if the Union can continue the strike with impunity. It can be questioned whether the unfair labor practice route is itself too cumbersome given the dynamics of strikes, but the proposed bill also amends Section 10(l) to require the Board to seek an injunction against the strike if it believes new Section 8(b)(8) is being violated.

2. Detail

A petition for election under new Section 9(i) may be filed by one of four parties: the Union, ten percent of the employees, the employer, or the Federal Mediation and Conciliation Service.

The petition may be filed at either of two time periods: Ten days or less from the contract expiration and each 30 days thereafter. The thirty day period runs from either the date the strike commenced or the date of the last petition or election. In other words, multiple elections during a single strike are possible.

Section 8(b)(8)(A) makes it an unfair labor practice for a Union to commence a strike after a petition has been filed but before election results have been certified. Section 8(b)(8)(B) makes it an unfair labor practice for the Union to commence or continue a strike after election results are certified that a majority of employees have accepted the employer's current final offer.

The proposed amendment to Section 10(l) makes it clear that a Union's alleged violation of new Section 8(b)(8) is a priority matter which requires the Board to seek an injunction against that violation if an investigation discovers facts which warrant it.

A BILL

To amend the National Labor Relations Act to permit a secret ballot vote by employees who are about to strike or who are on strike, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1 (a) This Act may be cited as the "Employee Right to Vote Act of 1984."

(b) Industrial strife affecting the free flow of commerce of the United States, always a factor to be avoided, is now even more destructive as world competition increases. Such strife must be limited to cases where an employer and its employees clearly are in disagreement about the terms of the contract between them.

It is the purpose of this Act to extend America's democratic voting traditions to the fundamental area of a citizen's desire whether or not to engage in a work stoppage against his employer. Employees should be entitled to clearly state their views, free of intimidation and coercion, labor organizations should have an interest in the clear expression by their constituents of a desire to strike or not, and employers should be apprised of the strength of the sentiment for or against their offer in order to maximize the possibility of reaching amicable agreements.

Section 2 (a) The National Labor Relations Act (29 USC 158(b) et. seq.) is amended as follows:

(b) Section 8(b) is amended by adding the following new subsection:

"Section 8(b) It shall be an unfair labor practice for a labor organization or its agents

. . .

(8)(A) To commence a strike after a petition for election under Section 9(i) has been filed before the results of such an election have been certified;

(B) To commence, maintain, continue or resume a strike after a majority of employees voting in an election under Section 9(i) have voted to accept the employer's offer outstanding at the time of the election."

(c) Section 9 is amended by adding the following new subsection:

"(i) Upon the filing with the Board by (i) a labor organization which is the certified or recognized bargaining representative of employees in an appropriate unit, (ii) ten percentum or more of the members of such bargaining unit, (iii) the Federal Mediation and Conciliation Service, or (iv) the Employer of said employees; of a petition alleging (a) employees in such bargaining unit are contractually free to strike or will be so no later than 10 days from the date of the petition or (b) said employees have been on strike at least thirty days without a petition being filed or an election held under this section, the Board shall conduct an election among those employees for the purpose of determining whether said employees wish to accept or reject their Employer's then current contract offer. Any referendum pursuant to this subsection shall be conducted as expeditiously as possible and shall take precedence over elections pursuant to 9(c)(1). Elections shall be conducted pursuant to such rules and regulations as the Board prescribes."

(d) Section 10 (l) is amended by adding the words "or paragraph (8)(A) or (B)" after "paragraph (4) (A), (B), or (C)" and prior to "of section 8(b)."

Senator **Nickles**. Gentlemen, thank you for your cooperation before the committee.

Mr. Bartley, did you have a strike in 1983?

Mr. **Bartley**. Yes, sir, we did, a strike that lasted 109 days.

Senator **Nickles**. Then it was after that strike and after contracts and additional work that you were able to obtain the secret ballot?

Mr. **Bartley**. Yes; approximately 1 month following the strike, the union membership saw it wise to have a secret ballot to possibly prevent, in their case, the circumstance occurring again.

Senator **Nickles**. Was this a companywide strike or just at that plant?

Mr. **Bartley**. At that plant.

Senator **Nickles**. Was it your opinion, or possibly the opinion of some of the union members, that if there had been a secret ballot there would not have been a strike?

Mr. **Bartley**. There is a strong feeling among a number of members that had a secret ballot been taken either early on in the strike or during the strike, it would have either prevented a strike from occurring or ended it much earlier.

Senator **Nickles**. Mr. Takacs, in your proposal, are you saying that there should be a secret ballot prior to commencement of any strike and/or do you come back and say after a certain period of time in the duration of a strike there should be a secret proposal?

Mr. **Takacs**. We suggest both, but the development of the procedures opens the door for the NLRB, in its wisdom, to develop these new procedures that would address this in each particular case. We do recommend that this be applied both prior to and during any strike.

Senator **Nickles**. The election prior to commencement of a strike, would that be immediately prior to a strike, taking the company's last best offer, in that timeframe and then during the duration? Do you specify every 30 days or any guidelines along that line?

Mr. **Takacs**. Yes, we do have some guidelines. These are all based on petitions. The petition for election under that one section 9(i) may be filed by one of four parties: the union, 10 percent of the employees, the employer or the Federal Mediation and Conciliation Service, and this petition may be filed at either of two times: 10 days or less from the contract expiration, and each 30 days thereafter. The 30-day period runs from either the date the strike commences or the date of the last petition or election.

Senator **Nickles**. Can I interrupt you just a minute?

Mr. **Takacs**. Yes.

Senator **Nickles**. Is that for representation or is that a different petition?

Mr. **Takacs**. No, this would be for contract ratification or strike vote.

Senator **Nickles**. What union do you have it work for?

Mr. **Bartley**. At this plant we have the IU, International Union of Electrical Workers. We have four other unions representing four other plants, and we also operate four nonunion plants.

Senator Nickles. Is the provision in their contract, or is that something dealing with the National Labor Relations Act?

Mr. Bartley. We are proposing the National Labor Relations Act.

Mr. Takacs. These proposals are to amend the NLRA.

Senator Nickles. You mentioned a petition, but there is nothing in the National Labor Relations Act which says there has to be, or you are saying that there has to be a secret ballot vote. I understand. Please proceed. I did not mean to interrupt.

Mr. Takacs. I completed my comments.

Senator Nickles. You mentioned you have been successful at the Evansville plant. Do you have secret ballots at your other plants with your other unions?

Mr. Bartley. The four other unions that represent our other plants are all different unions, and each one of them has a secret ballot vote.

Senator Nickles. Each one of them does. Is this something you have been able to achieve, or is it a standard practice with those unions?

Mr. Bartley. This would be either part of their international or local union constitution, and it would each be an individual matter based on their constitutions. There are many unions that do not require a secret ballot, and many companies are faced with that, and there would be nothing to preclude our union from at some point in time doing away with the secret ballot.

Senator Nickles. Do you feel that the standup, the turnstile, or division types of voting are somewhat intimidating?

Mr. Bartley. I think they are very intimidating, and they leave people subject to ridicule, harassment and all of those types of devices that can be exercised, and in fact are exercised, in the case of a labor dispute.

Senator Nickles. Do you think that the NLRA should be amended, as well, to mandate there be an election immediately prior to the commencement of a strike?

Mr. Bartley. Both an election, and that election we are also saying should be a secret ballot vote, and also during the course of a work stoppage, some remedy so that if members want to force a vote or if the employer wants to have a vote by secret ballot, that can occur. Something that requires a vote today, once a strike is underway.

Senator Nickles. If there was, 30 percent of the employees, or something along that line, would request the petition for a vote?

Mr. Bartley. Our recommendation is 10 percent to at least get something moving.

Senator Nickles. Gentlemen, I know you have time commitments, and I appreciate your comments before this committee. I hope you will be responsive as well as to myself and other members of the committee for additional questions.

Mr. Bartley. Yes. Thank you.

Mr. Takacs. We will respond to any questions. Thank you.

Senator Nickles. Our next panelist is Robert Price from General Dynamics, Groton, CT.

Mr. Price, welcome before the committee.

STATEMENT OF ROBERT J. PRICE, GENERAL DYNAMICS

Mr. PRICE. Thank you, Senator Nickles.

Chairman Nickles, my name is Robert Price. I am an employee of the Electric Boat Division, General Dynamics Corp., Groton, CT. My responsibilities in Groton are the testing for the final delivery of the Trident and the fast attack submarines. I am on what they call the trial crew, and I am an exsubmariner. I have 27 years with electric boat, and I have participated in unions for 26 of those 27 years.

Senator NICKLES. Mr. Price, are you still a member of the union?

Mr. PRICE. No. I resigned at the commencement of a strike that started in June 1983. My story has to go back. There is a tremendous division at electric boat. The union or the bargaining unit is split about in half, and how that occurred was in 1979, the union called a strike that was sort of a catch-22. They had already contacted job shoppers, and people had taken employment and were boasting that they had their tickets to leave, and the union had neglected to fulfill a requirement of the in place contract which required the union to give the company 30 days' notice prior to commencing a strike.

When the union had realized their mistake, it was too late. The preparations for the people to leave the Groton area for their job shops were set up. So about 3 days before the termination of the contract, the then president, and still is, Mr. Colville, got up from the bargaining table and called a strike with absolutely no secret ballot whatsoever.

Senator NICKLES. Could you identify the union?

Mr. PRICE. The union at that time was the Marine Draftsman's Association, Port of New London.

Senator NICKLES. Are they no longer with General Dynamics?

Mr. PRICE. They have affiliated with the UAW.

They took the union on a strike that lasted for 8 months. Just prior, at a union meeting with only 96 people in attendance, the union changed the bylaws to prevent people from crossing the picket lines. You would have to give a 90-day notice of withdrawal from the union or be fined 50 percent of your pay.

I personally called the union hot line and was told, "Don't bother to resign because it is not going to do you any good. We are going to get you for 50 percent of your pay when the strike is over."

I began my dissatisfaction with the union when they changed the bylaws. I did not like that. That was threatening and intimidating. Our union prior to that was an association, a social type union. We would have dinner dances, never had any money in the treasury. We had $50,000 and we would have a big party. We did not need any money. We had a marvelous relationship with the company. We had a then president whose name was Herb Serle, and we had a small, short strike in 1973 when he was the president, and if there is such a thing as a friendly strike, the then president and the general manager of the company, Joe Pierce, would come to the picket lines and tell us, "We're inside, trying to straighten this thing out." It was a 14-week strike and we went back to work.

Mr. Colville's philosophy is clout, clout against the union membership, clout against the company.

Senator NICKLES. What is his position?

Mr. PRICE. He is the president of the MDA UAW. He was when he commenced the strike in 1979 without a secret ballot, and he is today.

His philosophy is the company has got it, and we are going to take it away from them. My position is compromise.

We have another union at electric boat with about 15,000 to 16,000 people in it, and I have a lot of admiration for its leader. His name is Thomas Kitty. He has none of the problems that Mr. Colville has whatsoever.

To get on with my story, he called this strike in 1979, and I had just had it. After I made my phone call and they told me, "Don't bother to resign because we are going to get you for 50 percent of your pay," I stuck with the company. That was it for me. I did not resign. I went back to work.

The union then began immediately intimidating, threatening with court fines, reminding everybody of the new bylaw about the 50 percent of the pay, and throughout the strike the threats continued that when this strike is over, you are going to pay 50 percent of your wages.

Before the strike was over, 800 people returned to work. Then the intimidation really started. The union then set up kangaroo courts, forcing people or asking them to present themselves at the kangaroo court to humiliate them, published their names on union documents and posters of who had paid their fine, and as time went on, there were about 400 of us who refused to pay their fines.

The union then made arrangements with the lower courts in the State of Connecticut to take 20 cases a week, until all 400 cases were heard. We are going to get the money one way or another.

This is where now I became actively involved. I was not in the first group of 20, but I could see 20 sheep. They had no evidence; they had no leader. They just walked into the courthouse in the city of New London, disorganized, no evidence whatsoever.

About a week prior to their appearance in court, when I realized that this was going to happen, I started gathering evidence. They did not even know I was doing this. I stood in the hallways of the courts yelling out, "Anybody being sued by the MDA come here." In a matter of an hour or so we prepared our defense. After 2 hours of testimony, Superior Court Judge Barry Schuller, who is the fifth highest ranking superior court judge in the State of Connecticut, was sent by the court system because they knew that the issues that were going to be heard were much more complicated than are normally presented in small claims court. So we did not have a judge with light experience. We had the fifth ranking superior court judge in the State. After 2 hours of testimony, Judge Barry Schuller dismissed the union's case. They were unable to show that the strike was duly authorized.

You see, there was no secret ballot, the question of the legality. The union had not given the company the required 30 days' notice. The company had asked the union at the bargaining table, "Let's keep talking. Give us the 30 days' notice now, and you've got 30 more days to talk." Colville could not do that because the job fares were planned. The people already had their airplane tickets on the way to the west coast and all over the country. So the strike started.

I blame the strike of 1979 on Mr. Colville. Then he decided to blame his shortcomings on the fact that we were not affiliated with an international union. One of the good things that came out of the affiliation with the UAW, they do have in their bylaws you need a two-thirds majority, but now we had a union that was split right down the middle. About 50 percent of the bargaining unit did not belong to the union, and the people that did belong to the union identified themselves with a blue button I have in my pocket. This little blue button does not look like much, but when you affix it to your General Dynamics badge and when you enter a workplace where there are other MDA people, and you do not have this badge, and they refuse to speak to you, what does that do to productivity? How would you like to run a company or operate in this room where 50 percent of the people refuse to talk to the other 50 percent?

It was bewildering to me why the company allowed this. It was the type of thing you really could not put your finger on. Telephone calls would not be passed on. For example, you would come home from work and your wife would say, "I called work and told you to call home. You never called." The fellow who answered the phone had a blue button. He does not speak to a person who does not also have a button.

So what I am trying to point out and keep it short here, I am not part of management, but from my position, it hurt productivity tremendously. It was a terrible thing for productivity at Electric Boat.

Then the union did everything that they could do to block technological changes. We now are in competition with Newport News who has decertified their union, and all of their people have gone on salary, and it took them 7 years to finally decertify their union, and the reason I think it took that long is because in my opinion labor law is written to protect unions, not workers, and that is what I am here for, in hopes that we see some changes.

In 1983, another strike was called, and when we affiliated with the UAW, the platform that Mr. Colville came from was that, the UAW being such a huge union with all of their money and all of the politicians in their pocket, General Dynamics would not dare have a strike. We have a $500 million strike fund. We have free medical insurance. Mr. Colville told the members that any strike could not last more than 2 weeks because the company just could not get along without them.

Well, there was a secret ballot. This is what I pointed out before. I was happy to see that, but only 50 percent of the people in the bargaining unit were members in good standing and could vote. So out of the 2,000 people we are talking about, 1,000 in good standing and were allowed to vote, and it carried two-thirds, but with Mr.

Colville's and the bargaining unit's prompting, that with all of this clout, no problem. They went on strike.

This number may not be exactly correct, but it was somewhere between $17 and $20 million the UAW spent on strike benefits and one thing or another to support this strike.

Finally when the union went out on strike Electric Boat grasped this opportunity now to bring themselves in competition with Newport News. The strike was on hardly weeks when you began to see entire drafting rooms, and you people probably have never seen one, but just huge rooms with just drafting tables from one end to the other. The tables were taken out; huge computers brought in. Two satellite offices were opened in Atlanta and Tampa, and these offices were linked with these computers while the union was out on strike. This strike lasted nearly 15 months, by the way, and while the union was out on strike, we, the draftsmen, the people in the MDA, the bargaining unit, designed the basic concept for our next class fast attack submarine.

When we delivered the plans a few weeks ago to the Navy, Mr. Colville threw in the sponge. He knew that it was all over, that we did not need him, that he had misjudged what we could do, and signed a contract with Electric Boat Division. After having told the membership that the strike would last 2 weeks and he would never return to work unless the entire striking unit went back together, that strike left 500 people on the street. These 500 people, the bargaining unit was broken up into three groups: Group A, B, and C. One hundred sixty people went back to work. There is another group called Group B which will be returning over a 1-year period.

The people coming back to work now are not necessarily returning to work. They are returning to school to come up to speed on the computers and the new technology that was put in place in their absence. We now are preparing for the next phase of development of the SSN-21, the next class of fast attack submarines, and the people that have come back on strike are now learning the skills necessary to operate these computers.

There were letters to the editor by people, very bitter, of the contract that left these people on the street in category C that will never return.

Also, there is another interesting point. In this contract, we hired 380 new employees that were brought from all over the country to Electric Boat. In this contract that I consider invalid because the determination of a decertification election that was held and petitioned by the union has not yet been decided. I do not think that the law should have permitted any contract to be signed until this decertification was determined. In this contract is a clause that these 380 people will be moved out of the bargaining unit.

Now, the union is supposed to represent the people. These 380 people were brought from all over the country. They are people, too, and I represent them. They were brought there with the intention of having a full-time job. Electric Boat paid their carfare to come out to Connecticut, and now the union and the company have gone into a contract that eliminates their jobs. I am very upset about this.

Senator NICKLES. Can I interrupt you with some questions?

Mr. PRICE. Gladly.

Senator NICKLES. How long did the strike in 1983 last?

Mr. PRICE. Almost 15 months.

Senator NICKLES. When was it settled?

Mr. PRICE. August 23d.

Senator NICKLES. Of 1984?

Mr. PRICE. 1984.

Senator NICKLES. You said there was a decertification election that has taken place, but the results are not in.

Mr. PRICE. There was a decertification election which, in fact, was actually a certification election. The union itself sponsored a decertification election. The petitions were collected at a union meeting. The person who submitted the petition is named Robert Canova. He signed the petition. On the bottom of the petition is an article that says that what I am saying here is the truth, when in fact the petition was to certify.

We were threatening to decertify, and had collected petitions to decertify, and the union themselves put in a petition to get an election before the 12-month period was up. You see, an election held prior to the 12 months, everybody in the union can vote. After the 12 months, only those people actually working can vote.

The election was sponsored by the union, and everybody voted. Now, we filed challenges that many of the people that had voted in this election no longer worked there, that they had been replaced by technological changes. This group only reinforces my claims that these people do not work, but the NLRB recently ruled that all votes will be counted, even though these people's jobs had been eliminated, which I again feel as though labor law is certainly not written for us, the faithful employees.

I want to point out that this is the regional director's decisions. We do not accept this. We will be going to the full Board with this. That is yet to come up.

Senator NICKLES. Is the deauthorization election still pending?

Mr. PRICE. It is still pending. We now are collecting petitions. I have 713 of them here. We have about 1,150 to 1,200 people in house now. I have collected 717, and my agents are still collecting back home, we will go over 800.

Now, if the union is going to be shoved down our throat, if we were denied a decertification election after the 12 months because the union themselves petitioned one prior to the 12 months, we do not want to pay their dues. There is 800 of us out of the 1,200 presently in house. These are the petitions right here which we will be filing with the National Labor Relations Board for a deauthorization election.

Since it is going to be shoved down our throat, we do not deny them their little union. If they want to have their union, fine, but labor law should be changed that a person has a choice. A person should not be made to pay union dues that is put into political contributions and strike funds. For example, that's where part of our dues will be going now, if the union starts collecting dues, and we are trying to block that, but if they do, they are going to be going into a strike fund for the upcoming General Motors strike. I do not endorse a strike with General Motors. We are paying enough for automobiles.

Senator NICKLES. Is your local an agency shop? Is it a closed shop? Does it require membership by all persons?

Mr. PRICE. It requires that everyone pay dues, but you do not have to join the union.

Senator NICKLES. Was the 1983 strike a secret ballot?

Mr. PRICE. Interesting point. I think that everybody should be allowed to vote. If you are paying dues on something as important as a strike, if they're going to collect your dues and they are going to shove that down our throat, we ought to get a right to vote because we are going to be called terrible names and have terrible things done to us if we do not honor the picket line.

But, yes, I was not at the meeting that the strike vote was taken at, but as I understand it, it was a secret ballot.

Senator NICKLES. Going back to 1979, did the local bylaws require secret ballot?

Mr. PRICE. I do not think so.

Senator NICKLES. In your last comment, you talked about the decertification election. Were you allowed to vote under the certification election?

Mr. PRICE. Every person, including all strikers—there were approximately 1,100 strikers and probably 800 people, and I call them faithful employees, who were working in the plant, were allowed to vote.

Senator NICKLES. In your opinion, do you think Federal law should be amended to require secret ballot votes for strike authorization?

Mr. PRICE. Absolutely.

Senator NICKLES. Do you think there should be a secret ballot vote requirement or the possibility for workers to petition for a secret ballot vote in the duration of the strike?

Mr. PRICE. In the strike of 1979–80, there was a group of people working in Pascagula, MS, that let Colville know, the president of the union, that they were dissatisfied and wanted the union strike to come to an end and petitioned the union.

Mr. Colville, just as he got up from the bargaining table and walked out and called the strike without a secret ballot, ignored these pleas and these petitions. It is provided in the bylaws that if a petition is received, and I do not know the exact percentages, a union meeting must be held. He denied or just ignored these petitions, and there were no meetings held.

Yes, I do, and I think the number should be a low number. It does not hurt to have a vote.

[The prepared statement of Mr. Price follows:]

STATEMENT

OF

ROBERT J. PRICE

BEFORE

THE

SUBCOMMITTEE ON LABOR

OF THE

UNITED STATES SENATE COMMITTEE

ON LABOR AND HUMAN RESOURCES

CONCERNING

AMENDMENTS TO THE TAFT-HARTLEY ACT

ON

SEPTEMBER 13, 1984

September 13, 1984

Chairman Nickles:

My name is Robert Price and I am an employee of the Electric Boat Division of General Dynamics Corporation located in Groton, Connecticut. I am a technician responsible for the testing and proper functioning of instruments which are installed in Trident submarines manufactured at the Electric Boat (EB) plant. I have been working at the plant for almost 27 years and I had been a union member for nearly 26 of those years. With me today is Edward Hughes, my attorney, from the Center on National Labor Labor Policy.

I welcome this opportunity to discuss with this subcommittee certain issues which have developed in two labor disputes that took place at the plant over the past five years. As a result of the disputes which I am about to describe, I have become very concerned with the lack of democratic rights accorded to employees by our national labor laws with respect to internal union affairs.

My story begins on March 12, 1979, when the Marine Draftsman's Association (MDA), which was the collective bargaining agent for myself and approximately two thousand unit employees at Electric Boat, quietly moved to amend its by-laws with a provision that once a strike was called and picket lines set up, a member would be required to give 90-days notice of resignation before returning to work or be fined 50% of all his wages until the strike's conclusion.

On a matter as serious as this and with only 96 people in attendance out of 2,000 members, the proposed motion regarding the resignation restriction clause passed 93 to 3. This action, which was taken just 6 months prior to the expiration of the existing collective bargaining agreement, was strictly an effort by the union to dictate union solidarity.

The contract which was in effect at the time of the 1979 strike, included a provision calling for the agreement's automatic renewal beyond the expiration date. If either party wished to terminate the contract it was required to give 30 days notice. During these 30 days, negotiations for a new contract were to commence and the union was not to strike nor was the company to lock out the employees.

In total disregard of these provisions, which had been an element of many previous agreements, the union failed to give the company the required notice of its desire to terminate and renegotiate a new contract. Approximately 2 weeks before the October 1 expiration date, the union began to agitate for a strike by renting a drydock cafeteria adjacent to the company's offices where a job fair for union members was scheduled to be held. The purpose of the fair was to assist union members in locating employment in the event of a strike. In fact, before the contract's expiration date even arrived, some members were displaying airplane tickets and boasting that they had already taken employment elsewhere for the duration of a strike that had not yet begun.

The union's intentions finally became clear shortly afterwards when it walked out of a negotiation session in which the company offered to keep the bargaining process alive for thirty days to avoid a strike. The union, thereafter, unilaterally ordered a strike without ever conducting a secret ballot election of the membership. The company immediately sent out letters notifying members that October 1, 1979 was a normal workday and that a strike would be illegal.

This left hundreds of people like myself in a real dilemma. After three weeks, I phoned union headquarters to relate my intention to tender my resignation, but I was informed that it would do no good to resign from the union because of the new by-laws. I expressed my displeasure not only with the way the by-law was changed to restrict resignations, but also with the union's decision to ignore its membership's views regarding a strike by failing to conduct a strike authorization vote.

I then made a very difficult decision and decided to stay with the company, which in my opinion, had been very fair with me over the years. I returned to work and eight months later the union settled the strike on terms nearly identical to those offered by the company before the strike was called. The new contract was for three years running through June 1983.

The union agreed in the settlement that it would limit its resignation fines to $300.00 rather than the by-law provision requiring members to forfeit 50% of the wages they earned during the strike. The union immediately initiated a drive to humiliate former members by holding "Kangaroo Courts" and printing the names of members who paid their fines. Over 400 members refused to pay their fines so the union filed actions in state court seeking enforcement of its fines. Twenty members each week were to be hauled into court until all 400 had paid their fines. I was a spokesman for the group of workers sued by the union and after I explained to the court that the 1979 strike was not authorized by the full membership, all suits were promptly dismissed. Roy Colville, president of the MDA, has steadfastly maintained that the non-strikers must be punished and has pledged to appeal the lower court decision dismissing the fines.

As a result of the strike and the subsequent union court proceedings to collect fines from members, the bargaining unit was in complete turmoil. Morale decreased and productivity reached an all time low. This atmosphere was further exacerbated by a union scheme requiring all strikers to wear blue MDA buttons to distinguish them from those who returned to work during the strike. Those without the blue MDA buttons were not to receive the cooperation on work assignments by any union button wearing member. Important business messages were not forwarded by strikers to the non-strikers.

During this period of chaos with one half of the work force refusing to speak to the other half, the union was doing everything in its power to block technological changes designed to increase productivity at the plant. In an open letter to the union in February 1983, EB General Manager Fritz Tovar told the Union that if EB was to remain financially sound and competitive, an increase in quality and productivity was essential. The union scoffed at this and said EB already had the best submarine designers in the world and the company's sole competitor, Newport News Shipbuilding & Drydock Company, was not capable of designing and producing the future Navy submarine SSN21. Mr. Tovar replied that Newport News was a genuine competitor and if the union's attitude and worker productivity did not change, future contracts would be lost and everyone would be hurt.

However, the union remained obstinate and made no effort to improve relations with the company or the non-strikers. President Colville ignored mine and Mr. Tovar's pleas to make Electric Boat competitive with Newport News.

Over the term of the Contract (1980-1983), I repeatedly asked Mr. Colville to declare amnesty between the employee factions and resign as President because his policies were destroying the union. Instead, Mr. Colville began to make preparations for another strike upon expiration of the 1980-83 contract. Blaming the failure of the 1979-80 strike on the lack of a strike fund and insurance, the MDA sought affiliation with the United Auto Workers which promised political clout, access to a five million dollar strike fund, and free medical insurance. The MDA assured its members that with the UAW behind them, EB would not dare allow a strike.

President Colville grossly misjudged the sentiment of the workforce in 1983. He underestimated the resolve of the 1979-80 non-strikers; union members generally were fed up with a dictator and a union which lacked a basic respect for democracy. Despite a new contract offer by the company in 1983 of an overall 3% wage increase when contracts nationwide that year provided 2.6% average wage increases, and even though I and other unit employees were earning an average of $2 an hour more than the workers at Newport News, the union rejected the offer. With little more than 50% of the membership in good standing and able to vote, a strike vote was taken and on June 9, 1983, the MDA/UAW was once again on strike. President Colville assured union members that the political pressure and the unlimited financial support of the UAW would end the strike within two weeks. However, the strike would eventually last 14 months and cost the UAW $20 million in strike benefits.

This time I did not hesitate. I resigned from the union immediately as did many others. Within a short period of time, approximately 500 employees returned to work. Before the strike was over, another 400 employees returned to work with an approximate total of 900 members then back on the job. While the union was out on strike, morale at the plant soared, productivity rose dramatically, and with the help of new workers and new computers and other technological advances which the union refused to accept, we produced the preliminary plans for America's next fast attack submarine, the SSN21. It was not until Electric Boat delivered these plans to the Navy that Mr. Colville realized the battle was lost.

Last June, an election to decertify the union was conducted by the National Labor Relations Board. The petition submitted to the Board seeking a decertification election was filed by Robert Canova, who was a striking union member. His intent was to obtain an election before the anniversary date of the strike because he realized that the law would allow all strikers to vote in an election held within 12 months of the walkout. I argued vehemently before the Board that Mr. Canova was not really seeking an election to decertify the union since he was a staunch union member. I pointed out that, in fact, by checking the "decertification box of the petition, Mr. Canova was making a willfully false statement in violation of Title 18 which was described on the very bottom of the petition (Exhibit A). That box stipulates that "a substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

The Board rejected my argument that the signatures of people obtained by Canova to support his petition were not asserting that they no longer wanted the MDA as their representative. Even though Mr. Canova's real purpose was to seek a new certification and not a decertification election so that all the strikers could vote, the Board granted his request and an election was held just one day before the strike anniversary date. The results of that election, including my challenges to the voter eligibility of many strikers, is pending before the NLRB.

Many times during the strike Mr. Colville promised the membership that he would never return them to work without a job guarantee for everyone. However, he and UAW leaders settled the strike with the company last month by signing a new three year contract which calls for the definite return to work of only 160 members (category A). Five hundred more members (category B) may return only if EB is awarded the Pentagon contract to build the new SSN21 submarine. Five hundred other members (category C) have permanently lost their jobs.

The new contract signed by the company and the union contains many disturbing features in addition to its betrayal of the membership by the Union (Exhibit B). The 160 members in category A, scheduled to return immediately, will include many shop stewards and union officers who will "bump" others with greater seniority. In fact, Mr. Colville, who has been working for EB since 1956, has conveniently arranged for himself to be among those in Category A by bumping many workers in category B who have more seniority. Any doubt over the union leadership's real concerns was finally made clear in a recent memorandum sent to the membership advocating acceptance of the contract. It stated that "we have recommended you accept this agreement because in our judgement it is the only [way] . . . to preserve the existence of the union" (Exhibit C)(emphasis added).

The contract also includes a "union security clause" which requires all the employees at the plant to join the union and pay dues beginning September 23. Although my attorneys have filed unfair labor practices against both the company and the union insisting that it was illegal for a contract to be signed while the decertification election results are pending before the NLRB, I have taken additional precautionary measures. I have collected almost 800 signatures from approximately 1150 unit employees in order to obtain a deauthorization election that would invalidate the union security clause should the Board rule that the contract was legally executed. A substantial number of employees have also sent letters to the company ordering it not to withhold union dues from their paychecks.

The MDA/UAW is a union for a few and not of the majority. Despite its minority status it has managed to sow confusion throughout the plant. It contends that EB is a union busting company but the truth is the union's failures are all of its own making. Electric Boat, in fact, enjoys an excellent rapport with the Metal Trades Council (MTC) which is a coalition of unions representing 12 to 15 thousand workers at the plant. Mr. Thomas Kitty, who is president of MTC, maintains a philosophy that good faith bargaining ensures labor peace and as a result there has never been a strike at Electric Boat by the MTC while he has been president and the MTC did not support the recent strike by the MDA/UAW. Unlike Mr. Colville's selfish interests, Mr. Kitty looks out for the good of the entire MTC membership.

I hope that the events which I have described will convince this subcommittee and eventually the Congress, that our labor laws must be changed to emphasize that federal law protections were enacted for the benefit of employees and not for union officials. Specifically, I would recommend a requirement that unions poll their membership and receive a majority of votes before a strike could be authorized. In addition, the law should not allow a striker to secure a "decertification" election in the disguise of a certification election within 12 months of a strike, and thereby ensure the preservation of a union that does not enjoy the support of the majority of the work force that will remain at the plant. Finally, I urge that Congress withdraw the authority of a company and a union to negotiate a contract with a "union security clause" compelling union membership. It is employee security which is needed, not union security. Workers will join unions voluntarily if they feel it is in their best interests. Voluntariness will provide for better and more democratic unions.

Thank you,

Robert J. Price

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FORM EXEMPT UNDER
44 U.S.C. 3512

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO 39-RD-74

DATE FILED May 23, 1984

INSTRUCTIONS – Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

☐ RC-CERTIFICATION OF REPRESENTATIVE – A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

☐ RM-REPRESENTATION (EMPLOYER PETITION) – One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☒ XX RD-DECERTIFICATION – A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY – Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ UC-UNIT CLARIFICATION – A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* ☐ In unit not previously certified
☐ In unit previously certified in Case No. ____________

☐ AC-AMENDMENT OF CERTIFICATION – Petitioner seeks amendment of certification issued in Case No. ____________
Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER GENERAL DYNAMICS CORPORATION, ELECTRIC BOAT DIVISION

EMPLOYER REPRESENTATIVE TO CONTACT Mr. Thomas Kelly

PHONE NO 446-6511

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)* Eastern Point Road, Groton, CT 06340

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)* Shipyard

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE Submarines

5. Unit Involved *(In UC petition describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included

SEE ATTACHED

Excluded

6a. NUMBER OF EMPLOYEES IN UNIT

PRESENT 2100

PROPOSED (BY UC/AC) ____________

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?*

XXX YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable.)

7a. ☐ Request for recognition as Bargaining Representative was made on .... *(Month, day, year)* .... and Employer declined recognition on or about .... *(Month, day, year)* *(If no reply received, so state.)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state.)*

NAME International Union, United Automobile, Aerospace and Agricultural Implement Workers of America

AFFILIATION AFL-CIC

ADDRESS 8000 East Jefferson Ave., Detroit, MI 48215

DATE OF RECOGNITION OR CERTIFICATION October 9, 1985

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)* June 8, 1983

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES XXXXX NO

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING? 1,200

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF UNITED AUTO WORKERS, AFL-CIO *(Insert name)* A LABOR ORGANIZATION OF 8000 Jefferson Ave., Detroit, MI 48216 *(Insert address)* SINCE June 9, 1983 *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Robert P. Canova
(Petitioner and affiliation, if any)

By Robert P. Canova
(Signature of representative or person filing petition)

An Individual
(Title, if any)

Address 30 Lambert Dr., Norwich, CT 06360
(Street and number, city, State, and ZIP Code)

889-3081
(Telephone number)

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 923-788

* 2 cc hol

EXHIBIT

A

THE DAY

August 31, 1984

MDA showed union solidarity only until some of the members got a better offer

To the Editor of The Day:

As the son of a member of the MDA-UAW, I wish to express my feelings on the strike settlement to the public. My father is in the "C" group of the returning draftsmen, and he and hundreds of others who are also in the "C" group have lost their jobs at Electric Boat due to the incredibly unfair and ridiculous settlement between the union and the company.

I feel that both the union and the members who voted to accept the proposed contract have let down the members of the "C" group of the MDA-UAW. They went out on strike as an entire unit, and they should morally return as an entire unit. However, they are returning in separate groups, and some (including my father) are not returning at all.

My father is 57 years old, and has put in 12 years at Electric Boat, and since he has lost his job there, he must receive unemployment compensation because no one wishes to hire a 57-year-old man when there are 25- and 30-year-olds available.

I feel very strongly that the union to which he was very faithful has let him down by even allowing the proposed contract to be voted on.

I also feel that his fellow union members who voted to accept the contract were acting very selfishly, forgetting what the words "union" and "solidarity" mean. It seems as if the old adage "all for one and one for all" has become "all for one until I have been offered something better."

Hans J. Quamme
Oakdale

EXHIBIT

B

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA UAW
OWEN BIEBER, President
RAYMOND MAJERUS, Secretary-Treasurer

August 14, 1984

To: Members of UAW Local 571

Dear Brothers and Sisters:

The past fifteen months have been difficult. Perhaps the most difficult part was hearing your negotiating committee's recommendation the other night. No one on your committee or in the International Union thinks that this is the contract you deserve. We recommend it to you because we believe it is the best we can get at the moment and because prospects for any improvement in the future seem dim.

When you voted to begin this fight against the giant General Dynamics Corporation we pledged to struggle along side you all the way. I am proud of the battle we have waged together. The combined power of this corporation and its Pentagon allies has been difficult to overcome. I believe that General Dynamics and the Reagan administration set out to destroy this union - but they didn't succeed.

Together we held the fight strong, made our cause known in the halls of Congress and beat back the anti-union forces in the decertification election. In the end, however, our own members who deserted the cause weakened our ability to go on.

We have recommended you accept this agreement because in our judgment it is the only avenue open to us, at this time, to secure whatever jobs exist for union supporters, and to preserve the existance of the union. If you reject the agreement, as is your right, you must know, however, that we see no improvements to this offer in the near future. In all likelihood it will only get worse. As more and more members drift back, the company will have no incentive to bargain a conclusion to this strike.

Our hopes for a better future lie ahead. The hard work before us demands cool heads and determined hearts. Together I know we will survive.

Fraternally,

E. W. Barrett

E. W. Barrett
Director UAW Region 9A

EWB/hmz
opeiu494

EXHIBIT

C

Senator NICKLES. I appreciate your comments and appearance before the committee today. Thank you very much for your expertise and strong support.

Mr. PRICE. Thanks very much for listening, and I would like to say, and I hope everybody hears this crystal clear, my problem is ongoing. These law changes are fine, but we are being abused now by labor law. That this decertification election went the way it did, that the union was able to do this, when you examine all of these documents, you will see the way the union pulled this off.

Now, I hope, and I am a little bit pessimistic of what is going to happen to this, from my experience in labor law, and I have just got my feet wet in this thing, but I am learning fast from one bad experience after another, and they may have their union. They pulled off a fraudulent election. They can have their union, but we do not want to pay their dues, and I hope you people will help us and expedite this because our problem is ongoing now.

I am not telling you a story that was last week or last year. Right now. We are going to petition next week for this deauthorization vote. We need your help. We are people too. Labor laws are great for people who want to belong to unions. We do not want to belong. We have a marvelous rapport with our company. We respect this Mr. Kitty who represents the MTC. If we ever did want to start another union, we would probably want to get in with Mr. Kitty's union.

Thank you very much, sir.

Senator NICKLES. Thank you.

Our next panelist is Galen Cole, chairman of the board of Coles Express from Bangor, ME.

Mr. Cole, welcome. We appreciate your appearance again before our committee and the input that you have given us in the past.

Please proceed.

STATEMENT OF GALEN L. COLE, CHAIRMAN OF THE BOARD, COLES EXPRESS

Mr. COLE. Thank you, Senator Nickles.

Since 1917, Coles Express has operated a trucking company serving the general public from its home base in the State of Maine. The company has the distinction of being the oldest general freight trucking company in the State.

Having served as president and now chairman of this operation, Coles history reflects a need for change and modification in the Federal labor laws.

Let me begin with a history of the collective bargaining at Coles Express. For 20 years, through 1980, Coles was part of a multiemployer association who engaged in collective bargaining negotiations with the Teamsters. This multiemployer form of negotiations resulted in Coles' being a signatory to the Teamsters national master freight contract.

In the spring of 1981, the Maine legislature voted to deregulate all trucking within the State of Maine. This local legislation, along with the passage of the Federal law, the National Motor Carrier Act of 1980, resulted in fierce competition among trucking companies in a period of nongrowth for those of us who were saddled with the Teamsters master freight contract.

It also resulted in hundreds of new, nonunion companies registering to haul freight within our State.

Realizing that it was essential to have a contract with the union which reflected the economic climate in our area of the country, Coles withdrew from the multiemployer association and informed all of the unions involved that Coles would be negotiating with the unions on an individual basis.

The unions were disgusted with this course of action, and as I later learned, there was no intent on their part to give concessions to Coles. If we did not accept the national master freight agreement, there would be no contract.

Senator NICKLES. If I might interrupt you, I would like to begin asking you questions.

Mr. COLE. OK.

This is the Teamsters, isn't it?

Mr. COLE. Right.

Senator NICKLES. Which group of Teamsters?

Mr. COLE. Well, the primary group was local 340 in Maine because they represented the majority of our employees, but it included local 25 in Boston and other locals in Massachusetts. There were actually four locals involved.

Senator NICKLES. Due to economic conditions and competition, you did not feel like you could be competitive or survive under the master agreement?

Mr. COLE. Right; 64 competitors of ours that served New England had gone out of business, most of whom had gone bankrupt in the previous 2 years, and we would have been considered an average size carrier in that group, and we, on the other hand, handled more intrastate freight in Maine than all other carriers combined.

It was just totally impossible to compete and pay the national scale.

Senator NICKLES. You mentioned 64 carriers. Were most of those carriers affiliated with the Teamsters?

Mr. COLE. Yes; at least 60 of them were affiliated with this same Teamsters Union and were a party to the national contract.

Senator NICKLES. What year were you in the process of negotiating or trying to break away from the National Master Freight Agreement?

Mr. COLE. We started trying to negotiate with the union at the time of total deregulation in Maine in 1981. We were not successful in getting negotiations. We tried for some 9 months to get a single negotiating session, and we were granted the first negotiating session only 8 days before the expiration of the contract.

Senator NICKLES. You were basically told that you would either sign the National Master Freight Agreement or there would be a strike?

Mr. COLE. We were not told that, but as we negotiated the contract subsequent to the expiration of that contract, we learned that that was the case. We were given no consideration below the level of the national contract.

Senator NICKLES. In your past contracts was it always almost identical to the National Master Agreement?

Mr. COLE. The contract that was offered to us for not having signed the national was, in dozens of instances, far more severe than was the national contract itself.

Senator NICKLES. In your past contracts, did you basically work off of the National Master Agreement?

Mr. COLE. Yes, yes; it was almost identical for some 20 years to the national contract.

Senator NICKLES. So you were with the Teamsters and basically were complying with the National Master Freight Agreement for about 20 years?

Mr. COLE. Right; and under regulations we were able to do that for that 20-year period.

Senator NICKLES. Did the regulation allow you to pass on those increased costs, et cetera?

Mr. COLE. Exactly; and as long as we were as efficient as was our competition, this was possible for us to do. It was because of the 1980 deregulation act that was passed here by Congress and the total deregulation in the State of Maine that completely changed the water on the beans for us and for the 64 other carriers that I mentioned who went out of business.

Senator NICKLES. OK. Would you please finish the story after you refused to sign. What happened?

Mr. COLE. We refused to sign. We put our last best offer on the table, and the union refused that offer. They continued to work however for 2 months and 8 days with our last best offer.

Then on the night of September 8, 1982, the union came around to our terminals at 7 p.m., at all terminals, and called the men out on strike.

Not all of the men went on strike. Several dozen continued to work for the company and are working for the company today at our last best offer, which, by the way, is more than twice the wage of what the majority of those Maine men who went on strike are now earning at jobs around the State of Maine. Many of those people are working part time at minimum wage.

The strike lasted some 18 months, minus 1 day. Our men who contined to work and those who replaced the strikers voted to decertify the union, and the strike came to a close.

One of the major points that I want to make, which is in the statement, is the fact that these striking Teamsters were never given an opportunity to vote whether to accept or reject our last final offer. They learned to live under this new wage, which was a good wage and the men who continued to work are earning a far above average wage for the State of Maine, some $25,000 a year.

Those fellows who went on the picket line earned some $55 per week for two solid winters that they spent on that picket line, and then were told to get on with their lives and that the union could do no more for them, and this, in my opinion, is an absolute shame to some very hard working, conscientious people.

Had they ever had a chance to vote on our last best offer, I am thoroughly convinced, as are the men who are working and several of the men who are now unable to find employment, 90 percent of those people would have accepted our last best offer.

Senator NICKLES. Did they have a strike vote prior to or in the process of the negotiations?

Mr. Cole. Yes; they were offered, several weeks before our first negotiating session—and we went through the legal processes to notify the various unions that we would be negotiating our own contract, and as we went through that process, our people were offered an opportunity to vote on the national contract, but we were not a party to the national contract, and we had notified the unions several months in advance of that, and yet our people were offered that contract and that contract alone to vote on.

That part of the law obviously needs to be changed. In fact, I suspect that it is not legal for those people to have been told that they had already voted whether to accept or reject our offer. It was not even known what our offer was at the time that the national contract was sent out to all of the union members throughout the country.

Senator Nickles. It was on the strike vote you did not get the National Master Freight Agreement?

Mr. Cole. When the strike vote was offered?

Senator Nickles. Evidently, you mentioned there was a strike vote prior to entering into negotiations with your company.

Mr. Cole. Yes; so what their vote was was whether to accept or reject the national contract, and our people, for the most part, were not even aware of what the national contract was. It had never been presented to them. We had never offered that. We had told them. We had gone around to all of our terminals, explained to the employees and their spouses the inability of the company to compete and stay in business by offering that national contract.

So it was never a part of what these people were offered, and yet this was what they were offered to vote on several weeks before we even got to sit down for negotiations with the national bargaining unit.

Senator Nickles. They never really had a vote on anything that you were offering. They were voting to strike if they did not obtain the national agreement?

Mr. Cole. Yes, only to vote either to accept or reject the national contract, and their votes, those who voted, their votes went into the national to be counted.

Again, we were not party to the national.

Senator Nickles. That was a vote on whether or not they wanted the national contract, but what about the strike vote?

Mr. Cole. There never was a strike vote for our people. The Teamsters simply came into our terminals and said, "Fellows, we're on strike."

Senator Nickles. Your employees never had a chance to vote?

Mr. Cole. Absolutely correct.

Senator Nickles. Not a secret ballot vote, not a a standup vote or turnstyle vote?

Mr. Cole. They had no vote whatsoever, except to vote several weeks before we sat down for our first negotiating session, to vote on the national contract.

In a sense, you could almost take someone off of the street and ask them to vote on a national contract because these people were not represented by the national contract for the ensuing contract, because we had notified the Teamsters the previous summer that we would not, and the reasons we would not, be a party to that national contract.

Senator NICKLES. And there was no vote by your people authorizing a strike?

Mr. COLE. There was never any vote by our people authorizing a strike, and, as I said, I am convinced, and our people are convinced, that had the Teamsters ever offered our people an opportunity to vote, a strike would have been turned down because of the fine offer that we made.

The Teamsters themselves have contracts in Maine with truck drivers receiving pay less than one-half of our offer, but not the National Freight Contract with milk companies, bakeries, and so forth.

[The prepared statement of Mr. Cole follows:]

PRESENTATION BY GALEN L. COLE, CHAIRMAN OF BOARD, COLES EXPRESS, BANGOR, MAINE BEFORE THE LABOR SUBCOMMITTEE OVERSIGHT HEARING SEPTEMBER 13, 1984.

Since 1917, Coles Express has operated a trucking company serving the general public from its home base in the State of Maine. The company has the distinction of being the oldest general freight trucking company in the State. Having served as President, and now Chairman of this operation, Coles' history reflects a need for change and modification in the Federal labor laws.

Let me begin with the history of collective bargaining at Coles Express. For twenty years, through 1980, Coles was part of a multi-employer association who engaged in collective bargaining negotiations with the Teamsters. This multi-employer form of negotiations resulted in Coles being a signatory to the Teamsters National Master Freight Agreement. In the spring of 1981, the Maine Legislature voted to deregulate all trucking within the State. This local legislation, along with the passage of the Federal law, the National Motor Carrier Act of 1980, resulted in fierce competition among trucking companies and a period of non-growth for those of us who were saddled with the Teamsters Master Freight Contract. It also resulted in hundreds of new non-union companies registering to haul freight within our State.

Realizing that it was essential to have a contract with the union which reflected the economic climate in our area of the country, Coles withdrew from the multi-employer association and informed all of the unions involved that Coles would be negotiating with the unions on an individual basis. The unions were disgusted by this course of action and, as I later learned, there was no intent on their part to give concessions to Coles. If we did not accept the National Master Freight Agreement, there would be no contract.

The company requested negotiations with the affected unions 8 months before the contract expiration date. Despite this early request, the unions were unresponsive to the company's concern of declining profits.

stiffer competition from non-union companies and the negative effect of deregulation on the trucking industry. The first session was finally held 8 days before the contract's expiration. The irony of the union's apathy and its steadfast position concerning its National Master Freight Agreement was that the Coles Express employees were sensitive and understanding of our course of action and the need for economic relief from the Master Freight Agreement. Negotiations continued and ultimately led to lawful impasse. The company made its last best offer to the union and then implemented this offer. Some of the Coles employees who were Teamsters members advised me that the union had told them that they would get a chance to vote on Coles last best offer. Despite this assurance, no such vote was ever held because, according to the union, a vote on the National contract had already been taken. This one and only vote occurred one month prior to our first bargaining session. It is my firm belief that this vote created the only contract that this union would accept, no matter what kind of posture an employer or industry was in. With this union mindset, a strike began at Coles Express. This strike was not caused by employee rejection of the last best offer made by Coles to the union, but rather on the February 1982 vote concerning the Teamsters National Master Freight Agreement. I am distressed and outraged to tell this Committee that this strike vote was based on a contract that was never proposed to Coles Express until 8 to 9 months after the strike's commencement.

The strike finally ended 18 months later. Of the many picketers who held the union's line, many are now working for 1/2 the annual wages that Coles Express offered and with fewer fringe benefits. On the other hand, of those Coles Express employees who crossed the 1982 picket line, 30 of them continue to work for the company with average wages of $25,000 a year plus an excellent fringe benefit program.

I realize my view of this situation could be considered a biased one. However, as a person who believes strongly in the American Free Enterprise System, and in our country itself, it is clear that we are a free society and that unions are a part of that society, but under our laws, unions should represent their members. The union membership should be allowed to decide whether they want to accept or reject the wages and conditions offered by the management of their companies. In the case of Coles Express, I firmly believe that every employee who crossed the picket line feels that the union refused to let our men vote because they knew the vast majority of our employees would have accepted our offer and continued to work. Surely those employees working part time and at wages of less than half of what we offered to pay are suffering unduly. This past March, an account of this in the Waterville Morning Sentinel quoted the Teamster Local President in Maine as saying "...the strikers would have to get on with their lives." I ask why didn't he let them in 1982 keep on with their lives. I have stated often in my opinion the Teamsters used our employees as sacrificial lambs, never entering into serious meaningful negotiations, simply sticking to the National Contract as the way to go.

To recap, most importantly I believe the law should be changed to force any union to take the last best and final offer of any company to that company's membership and let those people decide for themselves whether to work or to strike. Certainly the law should never allow a union to hide behind a statement that members have already voted on a National contract when their company had no part in National negotiations. I believe it is true, not only in the trucking industry but a lot of others, that new competition is forcing companies to take their case to their employees. In the case of Coles, I believe we sold our case to our employees. In my opinion, we did everything we could to bring about a satisfactory arrangement for all concerned. The Teamsters Union in taking an arbitrary stand in demanding a National Contract for employees, where it was obvious we could not pay the National rates, has immeasurably hurt many fine, hard working men who today in the State of Maine cannot find steady employment at even minimum wage.

Our struggle to remain economically viable did not end with the union's questionable strike tactics. The Pension Benefits Guaranty Corporation and the Employee Retirement Income Security Act passed by Congress also appears to be aimed at seeing that Coles Express become an economic dinosaur.

In 1980, Congress tightened the PBGC withdrawal law and specified that PBGC confiscate up to 100% of any withdrawing employer's pension funds. In the case of Coles Express, when our employees earlier this year voluntarily decertified from the Teamsters Union, the company was advised by the New England Teamsters and Trucking Industry Pension Fund that we could no longer contribute to that retirement fund, thus triggering full withdrawal liability. The Fund's demand is for $2,455,595, slightly more than the book asset value of the company. The Fund's actuary arbitrarily determined this amount to be Cole's share of the shortfall between the Fund's assets and the needed amounts for the retirement of our employees.

What kind of justice do we have that forces a company who negotiated a specific hourly contribution into a retirement plan to be forced to total confiscation of all its assets because the Trustees, led by Teamsters, decide to set retirement amounts at levels higher than their poorly invested funds in Las Vegas casinos and otherwise, will or can produce. This law can and will spell the death knell to many historically reliable companies.

In order to prevent such abuses by these funds and their companies unions, I suggest the following reforms to this withdrawal liability issue:

1. Any actuarial assumptions which are utilized by the Fund in determining withdrawal liability should be standardized by the PBGC.
2. The decertification process by the NLRB should not trigger withdrawal liability from the Fund. The law should allow that benefits can be frozen at the current level unless the employees wish to make their own contributions. Simply put, an employer should not be threatened with economic ruin because his employees exercised their right of free choice pursuant to the NLRB processes.
3. The law should recognize and offset any withdrawal liability if strikers go to work for other union companies who make contributions to the same Trust Plan. Without this modification, the Fund gets a double dip of funding which is an unjustifiable windfall.
4. Finally, the PBGC should establish a standardized system of evaluating the value of assets in a Fund, including the benefits levels to assure that payments are reasonable in light of the assets and future income projections.

Ladies and Gentlemen, these are the problems facing our company. A sad commentary indeed for the handling by Congress of the laws that effect the very livelihoods of faithful employees and the very existence of their employer. Is this what a company should expect for having faithfully served the public of the State of Maine and New England for 67 years. I plead that you rectify for the good of the American Free Enterprise System these very unfair laws. To do less works solidly against Free Enterprise and the best interest of employees and companies who work to support it.

Senator NICKLES. Part of your statement addressed the multi-employer-withdrawal-liability dilemma that you faced. What was the large liability assessment?

Mr. COLE. $2,456,000, which exceeds our net worth by some $50,000, and that, of course, all comes about because of our employees deciding to decertify from the union.

Senator NICKLES. I am aware of that, and I know you are aware that some of us are trying to do something. Senator Cohen, has been helpful in trying to come up with a resolution to the dilemma of the withdrawal liability and some modifications in the multiemployer amendments of 1980 that dealt with withdrawal liability.

What is your current status on that? You mentioned you received a notice from the Teamsters that you have $2.4 million in withdrawal liability. You have not paid that. Is that in court?

Mr. COLE. Right, we have not paid that. We have made an offer, a substantial offer to the Teamsters Pension Fund. It was turned down at their last meeting.

Senator NICKLES. Which fund is this?

Mr. COLE. This is the New England Benefit Pension Fund for the Teamsters.

It was turned down. We have since been contacted by the Teamsters' attorney, suggesting that it may be reconsidered at their next meeting. We have made our first payment and taken the legal steps necessary to protect the company and have appealed for arbitration, for an arbitrator, and we anticipate within the next few months that one will be assigned, and that we will have a hearing to determine what the true amount due is.

Senator NICKLES. You are negotiating and also looking at arbitration to come up with a settlement?

Mr. COLE. That is correct, and again, the major point there is it does not seem fair or proper that Congress should allow that the employer should be hit with potential economic ruin because his employees exercised their right of free choice pursuant to the NLRB process.

Senator NICKLES. I read that comment, and I appreciate your comments and appearance before the committee, again, today.

Thank you very much for coming down.

Mr. COLE. Thank you, Senator.

Senator NICKLES. Our final witnesses today are Erle Phillips and Richard Watt representing Continental Airlines.

Gentlemen, I appreciate your appearance.

Please proceed.

STATEMENT OF ERLE PHILLIPS, ESQ. AND RICHARD L. WYATT, ESQ., FISHER & PHILLIPS, ON BEHALF OF CONTINENTAL AIRLINES, INC.

Mr. PHILLIPS. Mr. Chairman, I am Erle Phillips of Atlanta, and my partner, Richard Wyatt, also of Atlanta and Fisher & Phillips, is here with me. We are delighted to have this opportunity to appear before you on behalf of our client, Continental Airlines, Inc.

With respect to the rather lengthy statement we have submitted, of course, we would like for it to be part of the record.

Senator NICKLES. We will be happy to include it as part of the record.

Mr. PHILLIPS. In that statement, in essence, we attempted to compare some aspects of labor law under the Railway Labor Act as compared to the Labor Management Relations Act.

Now, we did not propose today to simply rehash this. I wanted though, and let me say this. I listened to Mr. Price's testimony, of course, here earlier, and I thought if he worked for a carrier subject to the Railway Labor Act, he would not have all of his problems because from the beginning of time, the National Mediation Board has declined and refused to authorize decertification elections. So he would be stuck with some union, and of course, we cover that aspect in this paper.

Insofar as Continental Airlines is concerned, that carrier is alive and well, and I suppose it is perhaps a major success story in the history of the Bankruptcy Act. Continental, before filing a chapter 11, had about 12,000 employees. It went down to maybe 20 percent of that, and it is now back up to about 9,500 people.

So that system has worked. These people have their jobs, and almost as many as we had before.

What we wanted to talk about today though is the conduct of the National Mediation Board in connection with a representation case filed by the International Brotherhood of Teamsters. It was filed on August 1, 1982.

The Teamsters sought to represent the nonrepresented, at that point, agents and clericals employed by Continental. As you may know, Continental Airlines is a result of a merger between Texas International Airlines and Continental Airlines, and part of the merger, the Teamsters represented the agents and clericals on Texas International. They did not represent them on Continental.

Under, I think, well established law in this area, Continental did not recognize the Teamsters after the merger because the nonrepresented group on Continental outnumbered by a considerable number those who had formerly been represented by the Teamsters on Texas International.

So, in any event, the IBT filed a petition with the National Mediation Board, and this was on October 1, 1982, in which, initially, the union sought what we call a 1706 unit. That was a unit for years found by NMB to be appropriate, including fleet service, passenger service and office clericals.

Now, the NMB, without any hearing or without any consideration, I guess, docketed that petition as three cases. They broke it down into fleet service, passenger service, and office clerical.

We tried from the very beginning to get the NMB to set the matter down for hearing, but, of course, the NMB says that an employer, a carrier, is not a party and really has no right to a hearing. So they do what they think best, and that varies from time to time.

We furnished them a list of potential eligible voters in the three classifications. We did that, I think, in November. At that time we had about 5,400 people in fleet and passenger service combined. We had about 1,500 in the office clerical.

Now, more time went by and in January 1983, the IBT challenged some 800 people in this fleet and passenger service. We filed all sorts of responses to that.

Now, ultimately the NMB, in its wisdom, ordered a hearing, but the petition was filed in October, October 1, 1982. The hearing was scheduled for April 1983. So that is October, November, December, January, February, and March, about 6½ months before they got around to having a hearing.

They did not want to do that for a while. Parenthetically, I think I would say that under the NLRB practice, we probably would have had hearings. We would have had an election ordered, and it would have all been over, but under the Railway Labor Act, this agency does not have a lot of rules, and it does not always follow the rules.

So I might say this. In 1977, NMB investigated another dispute, and this was a petition again filed by the IAM, which sought to represent all agents. Now, that would be fleet and passenger service, on Continental. I am sorry. They did not. They sought to represent only a fleet service. Excuse me.

In 1977, NMB held that all agents on Continental should constitute one class or craft composed of all agents, both fleet service and passenger service. We contended throughout this dispute that there had been little or no change in our operations, and therefore, the Board should follow its precedent in the 1977 case and find that the appropriate class or craft included fleet and passenger service.

But we finally had the hearing 6½ months after the petition had been docketed, and the IBT really did not put in a lot of evidence. Their last witness, a union official, was called, and he had a little chart, and that purported to show how many employees in each city were in fleet service and how many were in passenger service.

The chart was based on hearsay and hearsay on hearsay, and was certainly speculative. The hearing officer who presided denied IBT the right to introduce the little chart. He said, in effect, it is hearsay.

Well, there was an immediate appeal taken from this decision by the hearing officer to this Board, the National Mediation Board, and they reversed the hearing officer. It is standard, I guess. They admitted this chart for whatever purposes as may be relevant.

Now, once again, on August 11, 1983, as a matter of fact, the NMB issued its decision, and they went right along with the Teamsters, ignoring, we contend, the precedent created by the 1977 case.

They found that the appropriate class or craft, on the one hand, was fleet service and, on the other hand, was passenger service, two classes or crafts. Now, the basis of that decision, according again to the NMB, was that there had been rapid growth on Continental since the 1977 decision.

Well, there had been an increase in the number of cities because we had merged with Texas International. In support of its decision the NMB also cited the existence of discrete job functions for agents, some with passenger contact and some without; lack of interchange and cross-utilization, and finally, a lack of a community of interest between the agents performing primarily ramp and cargo work and agents performing primarily ticketing and gate work. We think we demonstrated by evidence in the hearings that there had not been any change between 1977 and 1983, other than there had been some growth, but the other factors remained the same.

But to move forward just as rapidly as I can——

Senator NICKLES. I have to interrupt you.

Mr. PHILLIPS. Yes, sir.

Senator NICKLES. I have to vote.

Mr. PHILLIPS. Right.

Senator NICKLES. How much time do you need to conclude? I have 7 minutes to get over to the Senate floor and vote.

Mr. PHILLIPS. Senator Nickles, frankly, it will take me probably 5 minutes or so.

Senator NICKLES. Let me do this. I will recess, vote, and come right back.

Mr. PHILLIPS. Fine.

Senator NICKLES. It will probably take me about 15 or 20 minutes to vote.

Mr. PHILLIPS. Fine, fine.

Senator NICKLES. Thank you.

We will stand in recess.

[Whereupon, a short recess was taken.]

Senator NICKLES. I wish to apologize for the interruption. We had two votes and will have one more shortly. We need to expedite, and again, I apologize for the interruption to those who are in attendance today. Please try to keep your remarks short as I would like to ask you a couple of questions.

Mr. PHILLIPS. Fine, Senator. We will go forward, and we appreciate you recessing and coming back.

The next development in this representation dispute occurred in September 1983, when the NMB issued a preliminary eligibility list for each of these so-called classes or crafts.

Now, from my standpoint, at least, it had hundreds of inaccuracies and problems, and the Board was not too proud of what they had done because in a letter to the parties about it, they said this. The NMB said this.

> These lists are based upon the carriers' work schedules, lists previously provided to the Board, and the station roster of ASA's and CSA's. Due to some gaps in the information, our inability to read some of the schedules, and lack of annotations regarding specific duties, this list may not be entirely complete or accurate. However, it represents our best efforts to integrate all of the data into a single set of lists.

Well, we did not like that. We thought it was improper and wrong, but that is where we were on that.

Now, I should say this. At this point in time, in August 1983 and, I think, in July 1983, top management of Continental felt that if the matter went to an election among these agents, that the Teamsters would not prevail, and we shared that belief. We thought we could win an election. We thought it would be more difficult if the Board attempted to vote, and tried to subsequently, 1,500 people or more who were not employed and who were never coming back. That is a little hard, but the morale of the people in these classifications was good.

They had, as a matter of fact, voted overwhelmingly, 85 percent, for a pay cut, and they were glad to have jobs.

So in any event, on September 24, 1983, Continental filed for chapter 11 protection, and at that point 60 to 70 percent of the employees in these two crafts were terminated or released from service. The system was cut to about 30 cities. The manner of operations was drastically changed, and the pay and benefits were cut about in half.

Now, we sought at that time to prevail on the Board, the NMB, to stay the election because of these drastic and unbelievable changes. We could not challenge these eligibility lists because the people in the personnel department had been furloughed, released. The managers in the various cities had been terminated or released. We did not have the bodies to try to go through and do this.

We did tell the NMB that we would be glad for them to send their people in and they could have access to our records and prepare an appropriate voting list. They did not do that.

Well, in any event, and I am omitting some of this in this abbreviated statement, frankly, we ended up with an election being ordered, and it was a mail ballot, and the Board, again, I guess, maybe in an effort to help the union here, extended the election period to an unprecedented, 6 weeks. In other words, the Board mailed the ballots out, and the employees, both furloughed, and working, had 6 weeks in which to get the ballot back in.

Now, we filed a lawsuit with the bankruptcy court on November 17, 1983, and in January 1984, Judge Roberts granted our motion, in part. He applied the bankruptcy code's automatic stay to the NMB proceeding. In his opinion, he said a representation case is a proceeding against the debtor and, two, Continental was a party to the representation case.

So where we are at this point is the election remains enjoined. Those ballots have been cast, but they have never been counted.

Now, we really believe this.

Senator NICKLES. When was the election time? You mentioned 6 weeks.

Mr. WYATT. From late November until early January 1984.

Senator NICKLES. Until when?

Mr. WYATT. The votes were scheduled to be counted on January 12, I believe, 1984.

Senator NICKLES. But they have not been counted?

Mr. PHILLIPS. They have not been counted. The bankruptcy court ordered the proceedings stayed.

Senator NICKLES. All right.

Mr. PHILLIPS. Now, out of this one case, we think a number of conclusions can be reached. We think that one need—and how you go about solving the need, there are several options—but we think there needs to be a provision for an appeal from decisions of the National Mediation Board in these representation cases.

We believe that if that is done, then we will not have denial of due process. We will not have failure to rely on past precedents. We will not have arbitrary action.

There is ample precedent for that as far as the National Labor Relations Board is concerned. We cited a number of cases in this earlier statement, but one recent one, decided August 30, is a case of *Continental Webb Press* v. *National Labor Relations Board,* and it was a decision of the Seventh Circuit Court of Appeals.

In that case, that circuit refused to enforce an order of the National Labor Relations Board in a representation case because the court said:

> The Board is allowed to reverse course, but it has got to give reasons or else the reversal is arbitrary. This general principle of administrative law is fully applicable to unit determination.

This is a law. This is nothing new, but it is another decision by a court of appeals on this point. It is the same type of case. A unit determination is a representation proceeding insofar as the NLRB is concerned.

I think, again, our lengthy paper here outlines various areas that we think the Congress should take a look at and see if there is some need, and we think there is, for change.

Again, there are two ways to go. One is to abolish the National Mediation Board, transferring part of its functions to the NLRB and the other functions to the Federal Mediation and Conciliation Service.

The other way, or one other way, is to amend the present law, and I think these are fairly simple amendments, to provide, for example, for an appeal, to provide for decertification, and there are a number of other areas that we cover.

If you have any other questions, Senator, I would be delighted to try to answer them.

[The following was received for the record:]

BEFORE THE UNITED STATES SENATE
SENATE LABOR SUBCOMMITTEE
SENATE LABOR AND HUMAN RESOURCES COMMITTEE

A COMPARISON OF SELECTED ASPECTS OF LABOR RELATIONS UNDER THE RAILWAY LABOR ACT AND THE LABOR MANAGEMENT RELATIONS ACT

Testimony of:

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On Behalf of:

CONTINENTAL AIRLINES, INC.

September 13, 1984

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TABLE OF CONTENTS

Page

INTRODUCTION 1

REPRESENTATION DISPUTES Under The Railway Labor Act and the Labor Management Relations Act 4

- Carrier Participation in Representation Proceedings 5
- Craft or Class Determinations 8
- Voter Eligibility and Employee Free Choice 10
- Changed Circumstances 13
- Multi-Party Elections 19
- Expansion of Jurisdiction 21
- Decertification 23
- Unfair Labor Practices 34
- Laboratory Conditions 39
- Judicial Review of Agency Action 41

COLLECTIVE BARGAINING AND MEDIATION Under the Railway Labor Act and the Labor Management Relations Act 47

SECONDARY PRESSURE Under the Railway Labor Act and the Labor Management Relations Act 53

CONCLUSION 58

A COMPARISON OF SELECTED ASPECTS OF LABOR RELATIONS UNDER THE RAILWAY LABOR ACT AND THE LABOR MANAGEMENT RELATIONS ACT

Labor relations in the railroad and airline industries are governed by the Railway Labor Act as opposed to the Labor Management Relations Act. From a historical perspective, the Railway Labor Act was enacted in 1926 as the first major federal labor statute. The primary purpose of the Act was to avoid any disruption to commerce by a labor dispute in the vital railroad industry. Subchapter II of the Act was added by amendment in 1936 to include airlines within its coverage.

The Wagner Act, or the National Labor Relations Act, was passed in 1935, nine years after the Railway Labor Act. This statute, which has been amended as the Labor Management Relations Act, was also drafted to avoid disruption to commerce, but in private industries other than transportation. Congress intended to maintain the special status afforded railroads, and subsequently airlines, because of the vital services which those industries provided in the flow of commerce. Local Union No. 25, IBT v. New York, New Haven and Hartford Railroad Co., 350 U.S. 155 (1956).

The two statutes contain many analogous provisions and address many of the same aspects of labor relations, e.g., employee selection of bargaining representatives, collective bargaining and mediation. However, the provisions of the Railway Labor Act, and the case handling procedure developed thereunder, reflect the overriding concern for the avoidance of strikes in the transportation industry. While this goal is also an object of the Labor Management Relations Act, it is not reflected with the same degree of urgency as with the Railway Labor Act.

In the intervening half century since the passage of these two statutes, the transportation industry in this country has undergone some drastic changes and developments. The trucking industry has emerged as the primary means of hauling freight in our nation. Deregulation has led to the creation of many new carriers operating on parallel routes. Carriers enter and leave the market with much greater frequency than under the government regulated market. In short, the transportation industry has became a more open, competitive industry, similar to other industries in the private sector.

The result of these changes has been that many of the provisions of the Railway Labor Act, and the case handling procedures developed for the transportation industry under that statute, no longer fit the needs of the modern railroad and airline industries. The continued need or desire for a special labor statute governing these industries has been called into serious question. For some time now, commentators and legislators have called for the amendment or the revocation of the Railway Labor Act.[1]

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[1] See, e.g., Hickey, Airline Labor Laws - A Fresh Look, 38 J. Air L. and Com. 231 (1972); Hoerr and Wildstrom, Ripe for Oblivion: The Railway Labor Act, Business Week, December 15, 1975, at 27. See also S. 3232, 92nd Cong., 2d Sess. (1972) introduced by Senator Packwood as the "Transportation Crisis Prevention Act of 1972" which called for the abolition of the National Mediation Board.

This paper will address several aspects of labor relations under both the Railway Labor Act and the Labor Management Relations Act. By comparison of some of the statutory provisions, and the case handling procedures followed by the various federal agencies created under these statutes, the deficiencies under the Railway Labor Act become readily apparent. This paper is offered to encourage legislative reform in this vital area of labor relations.

REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT AND THE LABOR MANAGEMENT RELATIONS ACT

Representation disputes involving the employees of airline and rail carriers are governed by the Railway Labor Act[2] and are regulated by the National Mediation Board ("NMB"). Such disputes among the employees of noncarriers are regulated by the National Labor Relations Board ("NLRB"), created and empowered by the National Labor Relations Act, as amended, or the Labor Management Relations Act.[3] While the historical basis for the special treatment of carriers engaged in commerce is readily understandable, the continued justification for a separate regulatory scheme is called into question by the realities of the modern, deregulated railroad and airline industries. The radical change in these industries in recent years has rendered impractical or unworkable many of the practices and procedures developed by the NMB in its representation case function.

In addition to the fact that much of the NMB's procedure for handling representation disputes is out of step with the modern industries with which the agency deals, the Board has recently demonstrated a marked pro-union bias and unwarranted expansion of its intended limited role, which raises further questions as to the continued need for the agency. By examining several areas of representation case procedure and recent handling by the NMB compared to that by the NLRB, it becomes clear that NLRB treatment of such cases is more efficient, workable and just.

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[2] hereinafter referred to as the Railway Labor Act or the "RLA".

[3] hereinafter referred to as the Labor Management Relations Act or "LMRA".

Carrier Participation in Representation Procedures

The National Mediation Board takes the position that the employer is not a proper party to representation procedures because Section 2, Ninth of the Act refers to "any dispute . . . among a carrier's employees" and does not mention the carrier's participation in the dispute. This position ignores the fact that the outcome of a representation proceeding will have a profound effect on the carrier's business operations. It also ignores the carrier's interest in safeguarding the rights of its individual employees who, alone, are unable to challenge improper union actions. The NMB does occasionally permit the carrier to participate in its proceedings, but this is granted by invitation rather than as a matter of right.

A recent example of the NMB's actions in this regard is Ground Services, Inc., 8 NMB 112 (1980). There, the employer was engaged in the business of providing ground services, such as the loading and unloading of baggage and the cleaning and stocking of aircraft, to a number of carriers in different cities. The NMB determined that these carriers were "joint employers" with Ground Services and therefore obligated to bargain with any chosen representative of Ground Service employees. However, this significant legal determination involving the carriers was made without any participation on their part.

The Board's authority to conduct a representation investigation without the participation of the carrier was upheld by the United States Supreme Court in Brotherhood of Railway and Steamship Clerks v. Association for the Benefit of Non-Contract Employees, 380 U.S. 650 (1965). The Court explained that the Railway Labor Act does not require that the employees be made a party to the NMB's representation procedure. "Whether, and to what extent carriers will be permitted to present their views on craft or class questions is a matter that the Act leaves solely in the discretion of the Board," the Court ruled. 380 U.S. at 666. However, the Court further explained that the justification for this denial of the right to participate in NMB proceedings is the Board's limited function which it described as that of a referee. The Court further detailed the Board's role as follows:

> [The Board] does not select one organization or another; it simply investigates, defines the scope of the electorate, holds the election and certifies the winner. Thus, while the Board's investigation and resolution of a dispute in one craft or class rather than another might impose upon the carrier, we cannot say that the latter's interest rises to a status which requires the full panoply of procedural protections.

Id. at 667.

Obviously, the Court was considering a much more limited role for the Board than has been exhibited in recent decisions. Those carriers which were adjudged to be joint employers in Ground Services, supra, would certainly contend that the actions of the Board have exceeded those of a referee.

The Eighth Circuit Court of Appeals commented on the employer's inability to participate in a representation proceeding under the RLA in its decision in Sedalia-Marshall-Boonville v. NMB, 576 F.2d 394 (8th Cir. 1978). There, the Court of Appeals upheld a District Court's determination that the NMB had not violated its statutory duty in making an eligibility determination without the employer's input. However, the Court expressed its displeasure with the result which it felt compelled to reach, as follows:

> It is unfortunate that the statutes, and cases interpreting them, permit such unilateral and arbitrary imposition of a union upon a carrier without a hearing of any sort. The protections afforded a noncarrier employer by the NLRA are much to be preferred. But the responsibility to make that decision rests with Congress and not this Court.

Id. at 399-400, n.5.

For the purposes of comparison, the Labor Management Relations Act specifically allows for the participation of employers in representation proceedings, even to the extent of initiating a petition. 29 U.S.C. § 159(c). The NLRB's Statements of Procedure provide for a formal hearing as part of the investigation of a representation case where all the parties, including the employer, "are afforded full opportunity to present their respective positions and to produce the significant facts in support of their contentions." NLRB Statements of Procedure, Section 101.20. Additionally, the Board's Rules and Regulations allow for employer challenges to the determination of the Regional Director. 29 CFR 102.67.

Needless to say, the degree of employer participation in a representation case under the LMRA provides much greater protection for the rights of the employer and the individual employees. Perhaps that degree of participation would not be necessary if the NMB were actually limited in its role to that of an impartial referee, but that is not the case. Considering the complex legal and factual determinations which must be made in representation cases today, the procedures for employer participation under the LMRA are truly much to be preferred.

Craft or Class Determinations

The Railway Labor Act, Section 2, Ninth, provides for the certification of employee representatives in a specific "craft or class" of employees; however, the Act does not define these terms or specify what the crafts or classes will be. In the execution of its statutory mandate to resolve representation disputes based upon its craft or class determinations, the NMB has decided that these categories must be systemwide. New York, Chicago and St. Louis Railroad, 1 NMB 1 (1935). The Board has also developed historical craft or class determinations on both the railroad and airline industries and now maintains that it is bound by historical precedent and cannot modify these crafts or classes.

The Board's intransigence in this area has led to some absurd results which point to the agency's inability to adequately perform its duties. This can be seen in its recent treatment of representation disputes involving small shortline railroads. For example, in White City Terminal, 9 NMB 23 (1982) the Board ruled that it could not certify one unit covering all employees in spite of the fact that the carrier only had six employees and their duties were all interchangeable. (The employer operated a railroad with 13 miles of track which served an industrial park.) Asserting that it was bound by historical precedent, the Board found that the dispute involved the three crafts or classes of engineers, brakemen and maintenance of way employees and ordered three separate elections. The Board reached the same result more recently in Kyle Railroad Co., 11 NMB No. 94 (1984).

In comparison, the LMRA allows for the selection of a bargaining representative in any appropriate unit including an employer unit, a craft unit, a plant unit or any subdivision thereof. 29 U.S.C. § 159(b). Rather than being restricted by anachronistic craft or class determinations, the NLRB has great discretion in determining voting units. The NLRB recognizes that more than one bargaining unit may be appropriate and reviews a number of factors to determine if the unit sought is appropriate. In general, the NLRB will look to the community of duties and interests of the employees in making a unit determination. Swift and Co., 129 NLRB 1391 (1961).

The NLRB's approach to appropriate bargaining unit determinations is a more realistic method of grouping employees for the purpose of representation elections and collective bargaining. Rather than claiming to be bound to historical precedent which leads to absurd results, the NLRB has stated its policy of resolving unit questions free from "the restrictive effect of rigid and inflexible rules." Mallinckrodt Chemical Works, 162 NLRB 387 (1967). While systemwide determinations involving historical crafts or classes may have been an appropriate method of grouping carrier employees forty or fifty years ago, it is now an anachronism which ignores the realities of today's transportation industries.[4]

Voter Eligibility and Employee Free Choice

In recent years the NMB has rendered a number of decisions regarding voter eligibility in representation cases which illustrate its marked pro-union bias and abuse of administrative authority. Relying upon its claimed unlimited discretion and the lack of judicial review, the Board has made numerous rulings whose only purpose is to promote organized labor without regard to established procedure or precedent. Because of the procedural shell game played by the Board, the carrier and its employees cannot count on any aspect of the representation process other than the certainty that if there is any way for the NMB to find a sufficient showing of interest or eligibility of pro-union employees, it will do so.

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[4] For example, in recent years the NMB has spent an inordinate amount of time determining in which historical "craft or class" it will place a railroad's computer operators. See, e.g., Union Pacific Railroad, 8 NMB 434 (1981).

One area where the NMB has demonstrated this bias is in the determination of eligibility of terminated employees. For example, in Air Canada, 7 NMB 71, 7 NMB 110 (1979), the Teamsters filed an election petition on April 13, 1978, two weeks after the permanent lay off of 80 employees from the airline. The employees subsequently filed a suit seeking reinstatement. After a lengthy investigation, the Board conducted an election in August, 1979, and allowed the 80 employees to vote. In rejecting the carrier's protest, the Board cited § 1206.6 of its Rules which allows discharged employees to vote pending a request for reinstatement. The Board ignored section 5.305 of its Representation Manual dealing with the eligibility of furloughed employees which states that such employees are eligible only if they "have a reasonable expectation of returning to work."

In British Airways, 8 NMB 153 (1980), the Board used a voter eligibility date two and one half years before an election was held. Employees who had not worked for the airline for over two years were entitled to vote, while new employees, hired within the last two years, were denied the right. Clearly, such a procedure does not allow for an accurate assessment of employee desires.

Perhaps even more disturbing than these isolated cases of the abridgement of employee rights is the totally capricious manner in which the Board handles its representation cases. In the recent case of U.S. Air/TWU, 10 NMB 495 (1983), the employer petitioned the Board to change its election cut off date. The employer asserted that due to turnover in the craft or class, the number of eligible employees had been reduced to 13, while 13 new employees had entered the craft or class. The Board granted the extension of the cutoff date, finding that less than a majority of the present craft or class would be eligible to vote using the Board's formal procedure. While the decision in U.S. Air/TWU reflects a reasonable approach, it is completely at odds with that in British Airways, supra. This is an example of the Board's failure to follow precedent in one situation while doggedly adhering to its precedent in another, such as historical craft or class determinations.

In comparison to the NMB's eligibility determinations, the NLRB normally determines voter eligibility as of the payroll period ending immediately prior to the Regional Director's Direction of Election. The NLRB has stated that "[t]he essential element in determining an employee's eligibility to vote is his status on the eligibility payroll date and the date of the election." Gulf States Asphalt, 106 NLRB 1212, 1214 (1953). Only if a terminated employee has a reasonable prospect of recall will he be eligible to vote. Champion Farm Division, 193 NLRB 513 (1971). The same is true of laid-off employees. Higgins Inc., 111 NLRB 797 (1955).

The NLRB does not allow discharged employees to vote pending appeal of the discharge, as does the NMB. Employees allegedly discharged in violation of the Act are permitted to vote subject to challenge. If the number of challenged ballots could affect the result of the election, the NLRB will resolve the challenges after a decision has been made in the unfair labor practice case. Hunt Theater Corp., 113 NLRB 167 (1955).

As with other basic elements of representation case procedure, eligibility determination under the LMRA is accomplished in a more reasonable and consistent fashion than under the RLA. The NLRB's procedures will allow every current employee who possesses a real interest in the bargaining unit to vote while excluding those who no longer share that interest. The NMB, on the other hand, has permitted individuals who have lost any connection with the workforce to vote while excluding current employees who will be bound by the results of the election.

Changed Circumstances

The NMB has shown a particular unwillingness to acknowledge "changed circumstances" and other matters which could have a negative impact on a union organizing campaign. In no case is this more obvious than in its handling of a representation case involving Continental Airlines.

The Teamsters had been involved in a representation dispute involving the Office Clerical and Fleet and Passenger Service employees of Continental Airlines since October, 1982, when Continental merged with Texas International Airlines. After extensive hearings concerning an appropriate craft and class determination, the NMB issued its decision finding separate crafts or classes of Passenger Service and Fleet Service employees on August 11, 1983. At that time, approximately 4400 employees were preliminarily eligible to vote in the election. 10 NMB 433.

On September 24, 1983, Continental, saddled with overwhelming financial losses, filed for Chapter 11 relief in United States Bankruptcy Court. Immediately upon filing, approximately 60-70% of the employees in the two crafts or classes were released from service and the system was reduced from 80 to approximately 30 cities. Employee pay was reduced approximately 50% and benefits were cut as the carrier desparately struggled to survive. The carrier's operations were drastically changed in most cities.

Following the Chapter 11 filing, Continental formally notified the Board of the chaotic conditions on the carrier and requested the Board to indefinitely stay its representation proceedings pending the filing of its Reorganization Plan or resumption of normal operations. The Teamsters filed a motion also recognizing the lack of "laboratory conditions", but they sought an immediate election utilizing special rules calculated to enhance their opportunity for a victory.

Continental then filed a responsive pleading and a Supplemental Motion to Stay Proceedings or In the Alternative To Reopen Record and To Reconsider Findings. In support of its motion, Continental cited the automatic stay provisions of the

Bankruptcy Code as well as the Board's own prior decisions.[5] Continental also requested the Board to resolve the questions of eligibility for approximately 3000 furloughed employees.

On November 2, 1983 the NMB denied all motions before it. The Board refused to reopen the record, and refused to resolve the thousands of eligibility issues. 11 NMB 47 (1983).

On November 15, 1983 the NMB issued a final eligibility list and at that time informed Continental that 1400 Teamster challenges had been received and granted *ex parte*. Two days later, the Board began the election using an address list supplied by the Teamsters.[6] On that same day, Continental filed its Complaint and Motion for Declaratory Judgment and Injunctive Relief with the Bankruptcy Court.

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[5] For example, in *Pan American World Airways*, 7 NMB 174 (1980) the NMB dismissed a representation dispute application as premature because of an impending merger with National Airlines which would affect the employee complement. In *Security '76, Inc.*, 5 NMB 234 (1976), the NMB postponed representation proceedings for nearly a year while a company underwent a corporate restructuring on the theory that it would be "difficult, if not impossible" to determine a precise list of eligible employees during the restructuring.

[6] The NMB's Representation Manual dictates that the *employer* is to provide a list of potential eligible voters. Representation Manual, §§ 3.503-4, 6.3, 6.7. Following authorization of the election, the employer shall provide either gummed labels with the names and addresses of eligible employees, or a computer tape with the same information. Representation Manual, § 11.902. Continental repeatedly offered to provide the NMB staff with the necessary information to compile such a list, but explained that it lacked the necessary manpower to construct the list itself. The NMB refused this offer and utilized an address list furnished by the union. This procedure violates the NMB's own precedent which holds that when a carrier does not provide the labels or computer tape, the NMB will construct a list from the preliminary information provided by the carrier. *Pend Oreille Valley Railroad, Inc.*, 10 NMB 402 (1983). In the same context, the District Court for the District of Columbia has held that the NMB has no authority to require an employer to produce any specific document not in existence in its records. The employer's only duty is to provide the information necessary to compile the
(footnote continued)

On January 5, 1984 Judge T. Glover Roberts granted the carrier's motion in part and applied the Bankruptcy Code's automatic stay to the representation case. Four days later the NMB, in violation of the Court's Stay Order, issued a new decision suggesting for the first time that the changed circumstances on Continental will be examined in the post-election period. The matter is now before the Bankruptcy Court and U. S. District Court under the automatic stay.

The NMB's actions in this case amount to an incredible abuse of administrative process and a total disregard for the rights of the carrier, in the process of trying to salvage its business, and those employees who still possess legitimate interest in the terms and conditions of employment with Continental. To conduct an election in the middle of such a complete corporate reorganization makes absolutely no sense and clearly violates all applicable Board precedent. To honor over a thousand union eligibility challenges in an ex parte proceeding, while refusing to even consider the vastly changed circumstances of the bankrupt carrier demonstrated blatant bias on the part of the agency.

As Continental correctly forsaw, since the filing the composition of the eligible voter complement has completely

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(footnote continued from previous page)
eligibility list. Trans World Airlines v. NMB, 107 LRRM 2571 (D.D.C. 1981).

changed. Of the original 4425 people the NMB held eligible on November 16, 1983, only 2041 have returned to the current work force. Approximately 1087 employees in the craft or class are new hires and were not eligible voters in the election. Further growth of the carrier will probably involved considerable numbers of new hires, all of whom presumably will not be eligible to vote in any election if the NMB has its way.

Additionally, the corporation has been restructured during the bankruptcy. Many voters who were employees of Continental at the time of the prior decision are now employees of a newly formed corporation, Cargo Development Group, Inc.

The NMB persists, however, in its desire to count the ballots cast in the election, many apparently cast by people who while once CAL-employees have no interest in returning to work. These ballots were cast when conditions on the airline were in complete chaos, certainly not "laboratory conditions" as required by the NMB's own case authority. Laker Airways, Ltd., 8 NMB 236 (1981).

In point of fact, the NMB has ignored all its own precedent, the bankruptcy code, the dictates of common sense and good judgment by proceeding in an arbitrary and capricious manner to conduct an election where the only result sought by the NMB was a Teamster victory in the election.

While the National Labor Relations Board has not been faced with a situation quite like the Continental case, that agency has shown a readiness to acknowledge changed circumstances and revise its representation case procedure accordingly. As a general rule, the NLRB will postpone an election or dismiss without prejudice an election petition in a case where there is expected to be substantial expansion or contraction in the work force. The Board explained in Douglas Motors Corporation, 128 NLRB 307 (1960) as follows:

> Normally, under the Board's existing rules to warrant an immediate election where there is definite evidence of an expanding or contracting unit, the present work complement must be substantial and representative of the ultimate complement as projected both as to the number of employees and the number and kind of job classifications.

In that case, the Board dismissed the petition finding that the employer's work force was substantially contracting and the nature of the employer's business was undergoing a fundamental change. The Board found that it would be inappropriate to direct an election which "might result in the certification of a union not truly the choice of the employees of the new business operation . . ." 128 NLRB at 309.

In Trailmobile, Division of Pullman, Inc., 221 NLRB 954 (1975), the employer's business dropped off from 550 to 24 hourly employees at the time the union filed its petition. The employer testified that it expected business to pick back up considerably but did not know by how much and how soon this recovery would occur. The Board dismissed the petition, explaining as follows:

> Normally, absent special circumstances, where it is found that a requested unit complement is expanding to such an extent that it is not

> substantial and representative in relation to that projected in the reasonably foreseeable future, the Board dismisses the petition without prejudice to the filing of a new petition when the unit complement becomes representative and substantial.

Because the expansion was reasonably foreseeable, but not definite as to when it would occur, the Board found it appropriate to dismiss the petition rather than simply postponing the election.

This type of common sense approach to representation cases with the emphasis on employee freedom of choice is what is lacking in representation case handling by the NMB.

Multi-Party Elections

The NMB's recent handling of elections involving more than one labor organization is a further example of the agency ignoring its own statutory mandate and altering procedure by administrative fiat. For example, Aspen Airways Inc., 8 NMB 274 (1981) involved a petition for an election filed by the Aspen Airways Agents Association (AAAA). The craft or class of fleet and passenger service employees was currently represented by the Teamsters (IBT). The Board conducted an election among the 142 eligible voters, using a ballot with the AAAA and the IBT listed on it as well as a space for write in votes. The results of the election were as follows:

AAAA	5 votes
IBT	34 votes
Write-in	54 votes
Void	1 vote

The Air Line Employees Association (ALEA) received 54 write in votes, the most votes received by any party.

Despite the fact that the ALEA received less than 40% of the eligible vote, the NMB certified the union as the employees' representative. The Board's position is that since a majority of employees voted for *some* union, the employees have selected union representation; the Board then certified the union with the highest number of votes. This procedure requires a very loose reading of Section 2, Fourth of the Railway Labor Act which provides that the majority of a craft or class of employees shall have the right to select the representative of that craft or class.

Having established that procedure in *Aspen Airways, supra*, the Board then relied upon it as precedent in *Zantop International Airlines Inc.*, 9 NMB 70 (1981). There, the NMB certified the UAW in two crafts or classes where in each case the union did not receive a majority of eligible votes. In both elections, a small number of write in votes for various labor organizations and unions was added to the number of UAW votes to provide slight majorities voting for *some* representation. The Board followed this procedure again in *Air Florida*, 11 NMB No. 2 (1983), certifying the Teamsters, who received 11 votes, as the representative of a craft or class of 25 eligible voters.

The Board's procedure for handling such cases operates on the assumption that an employee voting for any representative would rather be represented by whichever representative captures the most votes than remain unrepresented. This assumption is obviously erroneous and can lead to absurd results. However, the NMB chooses not to conduct a run-off election between the representative receiving the highest number of votes and the choice of no representation, a procedure which would accurately reflect the wishes of the employees.

The National Labor Relations Board will conduct such a runoff election where there are three or more choices on the ballot and none of the choices receives a majority of the valid votes. NLRB rules provide that the runoff election will use a ballot providing for a selection between the two choices receiving the largest and second largest number of votes, including the choice "neither" or "none." 29 CFR 102.70(c).

As with most other aspects of the varied representation case procedure followed by the NLRB and the NMB, the multi-party election procedure followed by the NLRB serves to promote employee free choice while that of the NMB serves to promote organized labor without regard to employee free choice.

Expansion of Jurisdiction

In recent years the NMB has also demonstrated an unauthorized expansion of the scope of its jurisdiction well beyond rail and air carriers under the Railway Labor Act. One example of this is Ground Services, supra, where the NMB found this loading and maintenance contractor to be covered under the Railway Labor Act through a novel joint employer theory. In other cases, the Board has claimed jurisdiction over a company which provided guard services to Eastern Airlines, ARA Environmental Services, Inc., 9 NMB 37 (1981), and another company which ran a shuttle between the Los Angeles Airport and various hotels, Crew Transit, Inc., 10 NMB 64 (1982).

In all of these cases, the Board strains to find some element of control by the carrier over the employees of the ancillary enterprise. The Board's actions in this regard appear to be a simple case of job preservation. Over the years, the number of representation cases handled by the NMB had declined significantly. One study indicates that in the thirty year period between 1945 and 1975, the number of NMB representation elections declined from an annual average of 180 to an average of 51.[7/] Then, starting in 1975, the number of Representation cases increased until it peaked in 1980 at 144 cases closed during the year. However, the trend immediately reversed itself and the number of cases dropped off to 81 cases closed during 1982.[8/]

It is difficult to determine how much of the increased case volume in the late '70's was the direct result of deregulation and the resultant increase in the number of carriers and how much is related to the NMB expansion of its jurisdiction.

[7/] Krislov, The NMB's Representation Function: A Declining Activity, 43 J. Air L. and Com. 47 (1977).

[8/] National Mediation Board, 48th Annual Report, 1982, at Table 1.

Regardless, the NMB will likely attempt to expand its jurisdiction further into other ancillary industries and thereby increase its case load. The emergence of new multi-modal transportation systems is certain to provide new areas into which the NMB will attempt to expand.

The problem with the NMB's expansion of the scope of its jurisdiction is twofold: first, it subjects more carriers and employees to the unjust case handling procedures of the NMB, and second, it perpetuates the existence of the agency which would otherwise die a natural death. Even the supporters of the NMB would have a hard time arguing for its contiued vitality if its caseload were allowed to decline to two or three dozen representation cases per year. However, it is clear that the NMB will not allow that to happen as long as it retains unfettered discretion in handling representation matters.

Decertification

One area where the NMB has clearly shown its pro-union bias and totally ignored the interests of the employees whose rights it is charged with protecting is the handling of employees' decertification efforts, that is, employee efforts to remove a bargaining representative previously certified. While the RLA contains no express provision for the decertification of a bargaining representative, the NMB has historically allowed employees to accomplish that objective by electing an individual to replace the current representative. Once elected and certified, this individual representative could disclaim representative status. The NMB would then revoke certification, leaving the employees unrepresented.

While this procedure is certainly awkward compared to the direct decertification provision contained in the Labor Management Relations Act, 29 U.S.C. § 159(c), it has been used successfully to remove an undesired bargaining representative. However, in recent years the NMB has sought to thwart employee efforts at decertification by restricting who can petition or be certified as a bargainiing representative.

For example, Manufacturer's Railway Company, 7 NMB 435 (1980) involved an individual named Roy S. Ruffin who petitioned the NMB to investigate a representation dispute among the yardmasters of the Manufacturer's Railway. The United Transportation Union was currently certified as the representative. The NMB conducted a secret ballot election in which Ruffin received all seven votes from the eligible voters. Therefore, Ruffin was certified as the representative of the employees.

On August 11, 1980, Ruffin notified the Board that he would no longer represent the employees. Under prior rulings, the Board would have simply revoked certification, thereby leaving the employees unrepresented (the status they obviously wished to hold). However, on August 21, 1980, the Board issued an Order that Ruffin show cause why his certification should not be declared null and void and the certification of the former representative reinstated. 7 NMB 451. In its findings, the Board stated as follows:

> The Board must presume that Roy S. Ruffin, Individual, never intended to represent the craft or class of Yardmasters on the Manufacturer's Railway Company under the Railway Labor Act. The fact that he notified the Board only six days after the certification was issued is clear and compelling evidence that the request for a representation election was designed to frustrate the purpose of the Act.

7 NMB at 451.

On August 27, 1980, Ruffin responded to the Order to Show Cause by withdrawing his prior letter and stating his intention to serve as the representative of the Yardmasters. The Board therefore issued an Order that Ruffin remain certified. 7 NMB 485 (1980). However on January 19, 1982, Ruffin again disclaimed representation, stating that "all the conditions [the employees] were seeking have been met . . ." On the basis of that statement, the Board revoked certification leaving the Yardmasters unrepresented. 9 NMB 188 (1982).

It should be noted that on the same day as the issuance of the final Order in the Manufacturer's Railway case, the NMB denied a request to disclaim certification made by the IAM involving the Transkentucky Transportation Railway Company. 9 NMB 190. In a letter to IAM President Winpisinger, the Executive Secretary of the NMB stated that "the Board expects certified representatives to serve as representatives for at least one year." That letter is the earliest articulation of this Board policy which has as its effect, if not its intent, the frustration of employee decertification efforts.

In Chicago Union Station Company, 8 NMB 141 (1980), an individual named Gerald Gardner petitioned the NMB to determine the appropriate representative for the employer's signalmen. The unit was represented at that time by the IBEW. The NMB held an election in which Gardner received 0 votes, the IBEW received 2 votes and the Brotherhood of Railroad Signalmen (BRS) received 9 write-in votes. The BRS was then certified by the NMB, but immediately disclaimed representation.

The NMB set aside the election, revoked the certification of the BRS, and ordered a new election. In the second election, Gardner received 0 votes, the IBEW received 2, and the other 9 eligible voters abstained. Under NMB precedent, the fact that neither representative received a majority of the eligible votes would have rendered the employees unrepresented. However, in this case, the Board found that Gardner's failure to receive a single vote (including his own) demonstrated that he never intended to represent the employees within the meaning of the Railway Labor Act. The Board then held that lack of intent to represent employees constitutes a basis for dismissal of an application. Therefore, Gardner's application was dismissed ab initio and the certification of the IBEW was restored despite the clear desires of the employees.

In Lamoille Valley Railroad, 8 NMB 454 (1981), the NMB avoided a likely de facto decertification by denying an individual's application on the grounds that the applicant was not in compliance with the Labor-Management Reporting and Disclosure Act (LMRDA) 29 U.S.C. § 401 *et seq*. The LMRDA requires *inter alia* that labor organizations file certain documents including a constitution, bylaws and financial information with the U.S. Department of Labor. Because the individual in this case had not filed these documents with the Department of Labor, the NMB dismissed the petition.

The employer challenged the NMB's dismissal of the petition, claiming that the adoption of the LMRDA compliance requirement was in violation of the Administrative Procedure Act (APA) and was an abuse of the Board's discretion. *Lamoille Valley R.R. v. NMB*, 110 LRRM 2835 (D. Ver. 1982). The court ruled that the LMRDA filing requirement did not violate the APA because the petitioner had sufficient notice of the requirement. The court also ruled that even if the Board had abused its discretion by dismissing the application, the court was without authority to review the agency's action.

Following its *Lamoille Valley* decision, the NMB amended its Representation Manual to require that every applicant requesting a representation determination comply with the reporting and disclosure requirements of the LMRDA within 90 days of filing the application. The requirement seems unwarranted under the language of the LMRDA and the Railway Labor Act. The LMRDA places certain reporting obligations on labor organizations. 29 U.S.C. § 431. "Labor organization" is defined under that Act as:

> A labor organization engaged in an industry affecting commerce and including any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged.

29 U.S.C. § 402(i).

The LMRDA expressly provides that a labor organization will be considered "engaged in an industry affecting commerce" if it:

> (1) is the certified representative of employees under the provisions of . . . the Railway Labor Act . . . (emphasis added)
>
> (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees . . .
>
> (3) has chartered a local labor organization . . .
>
> (4) has been chartered by a local labor organization . . .
>
> (5) is a conference, general committee, joint or system board or joint council, subordinate to a national or international labor organization . . .

29 U.S.C. § 402(j)

Under the Railway Labor Act, "representative" is defined as:

> Any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees to act for it or them.

45 U.S.C. § 151, Sixth.

Clearly, not all potential "representatives" under the Railway Labor Act fall within the definition of "labor organization engaged in an industry affecting commerce" under the LMRDA. Until a representative is certified by the NMB, or has been recognized as the employees' representative, it would not come under this definition. However, the NMB has imposed the filing requirement on any person or group seeking to be certified as a representative under the Railway Labor Act. This requirement serves as a substantial hurdle to employees interested in decertifying their bargaining representative.

The NMB had all but foreclosed decertification under the Railway Labor Act through the liberal use of its broad discretionary powers. The applicant petitioning for a representation determination would be required to file a constitution, bylaws, and various financial records with the Department of Labor. The applicant would have to evidence an intent to serve as representative. Once elected, the representative could not disclaim representation for a period of at least one year.

Recently, however, the U.S. Court of Appeals for the Fifth Circuit has struck down the NMB's refusal to process a representation application. Russell v. National Mediation Board, 714 F.2d 1332 (5th Cir. 1983). In that case involving the Atchison, Topeka and Sante Fe Railroad, an employee group was formed with the express purpose of decertifying BRAC, the long standing representative of the unit of railroad police officers. The group selected an employee named Larry Russell to run as collective bargaining representative. With the understanding that once elected Russell would abrogate the existing collective bargaining agreement and then disclaim representation, the employee group collected 113 signed authorization cards for Russell out of a unit of 210 employees. Russell then petitioned the NMB for an election.

The Board dismissed Russell's application, finding that Russell lacked the intent to represent the craft. 8 NMB 469 (1981). In its decision, the Board explained its actions as follows:

> The Railway Labor Act, unlike the National Labor Relations Act, contains no statutory provision for decertification of a bargaining representative. [citations omitted] The Board will not progress an application for investigation of a representation dispute where the applicant lacks the intent to represent the craft or class if certified . . . and will dismiss such an application because it is void *ab initio*.

8 NMB at 474.

Russell filed suit in July, 1981, challenging the refusal to process his application as being an abuse of discretion in excess of the NMB's statutory authority and violative of the Plaintiff's First Amendment right to freedom of association. The U.S. District Court for the Northern District of Texas granted summary judgment against Russell holding that the NMB's decisions regarding representation disputes are not subject to judicial review. The court found that the Board's investigation of the application was sufficient and within its scope of authority.

Russell appealed the decision to the Fifth Circuit Court of Appeals. The court dealt with the threshold question of whether judicial review of the NMB's decision was appropriate. After an extensive review of federal court precedent, the Fifth Circuit noted that while judicial review of NMB decisions is "sparing," it is available in two narrow instances. Citing United States v. Feaster, 410 F.2d 1354 (5th Cir.), cert. denied, 396 U.S. 962 (1969), the court found judicial review appropriate when (1) there is a substantial showing of a violation of a party's constitutional rights as a result of the Board's action; or (2) when the Board's actions are in excess of its delegated powers and contrary to a specific prohibition in the Act. In this case, the court found the Board had violated its statutory mandate and therefore its decision was subject to review. Based upon the finding, the court found it unnecessary to address the constitutional issue.

The court noted two reasons why the Board refused to move forward with Russell's application. The first was that the Board determined Russell did not intend to "represent" the unit employees within the meaning of the Act and therefore his application for representation need not be processed. The second reason was the claim that allowing Russell to achieve his goal of *de facto* decertification would violate the Board's statutory duty to achieve the basic purpose of the Railway Labor Act.

In response to the first argument, the court analyzed what is meant by "representation" under the Act. The Board would define "intent to represent" as the intent to represent in contract negotiations, contract disputes, grievance procedures and other normal collective bargaining duties. The court explained that while these are the functions of a typical representative, they are not mandatory functions:

> There are no qualifiers attached to the Act's simple definition of 'representative.' The 'representative' of a craft of employees is, simply, a person or union designated to act in their behalf, to accomplish what they seek to accomplish and is not necessarily a man for all seasons . . . The claimed majority of the craft here wanted Russell, apparently to terminate collective bargaining. Tortuous interpretations of 'representation' aside, Russell fits the bill.

714 F.2d at 1341.

In its treatment of the Board's second argument, the court acknowledged that it is the basic purpose of the Railway Labor Act to promote collective bargaining in order to avoid the disruption of labor disputes. This has been called the "heart of the Act." Citing Brotherhood of Railroad Trainmen v. Jacksonville Terminal Company, 394 U.S. 369 (1969). The court explained, however, that employees were also given the right under the Act to reject collective bargaining as well as to engage in it. The court notes that employees shall have the right to bargain collectively, but not the obligation:

> The Act supports, but does not require collective bargaining, and in our view the implicit message throughout the Act is that the 'complete independence' of the

> employees necessarily includes the right to reject collective bargaining.

714 F.2d at 1343.

Having determined that employees have the right under the Act to opt for non-representation, the court then considered whether the Board had violated its duty by refusing to process Russell's application. The Board's duty, explained the court, is "to investigate fully and completely and properly and to certify the representative chosen by the craft of employees." Flight Engineers International Association v. Eastern Airlines, Inc., 359 F.2d 303 (2nd Cir. 1966). In this case, when the Board's investigation reached the point of determining the intent of the employees, the Board refused to process the application and refused to further investigate the representation dispute. By failing to fully investigate the dispute and to certify the chosen representative, the Board did violate its duty under the Act.

In summary, the court found that Russell had the right to petition for a representation election, the employees had the right to choose their representative regardless of that representative's intentions, and finally, the Board has the duty to process the application and certify the representation chosen by the employees. These rights and obligations exist even if the net result will be the decertification of the employee's collective bargaining representative. Therefore, the court remanded the case with instructions to the Board to proceed with the application filed by Russell.

The Fifth Circuit's decision in Russell v. NMB marks a significant victory for the rights of the individual employee under the Railway Labor Act. The court not only held that employees have the unrestricted right to reject union representation, in doing so it exposed many of the capricious and abusive practices carried on by the NMB in the execution of its representation dispute function. However, Russell v. NMB should not be regarded merely as a judicial mandate to rectify abuses in the handling of decertification efforts. It must be acknowledged as an indictment of the NMB's entire representation case handling procedure and further evidence of the need for immediate legislative action.

Unfair Labor Practices

In the course of employee representation cases which often involve strong convictions on the part of the union, the company, and the employees, it is not uncommon for one or more participants to attempt to control the outcome of the representation election through improper means of interference, influence or coercion. Both the RLA and the LMRA recognize this and specifically provide that employees shall be free from such interference in the selection of a bargaining representative. Section 7 of the LMRA provides that employees shall have the right to engage in union and other concerted activity and Section 8 provides that it shall be an unfair labor practice for an employer or a union to interfere with that right. Section 2, Third and Fourth of the RLA provides that employees shall have the right to engage in these same activities, free from interference by either party.

The statutes differ, however, in regard to the protection they provide for these rights. Section 10 of the LMRA specifically empowers the NLRB to prevent any of the unfair labor practices defined in Section 8 by investigating allegations of misconduct, conducting a hearing wherein both sides are able to present evidence, and by taking remedial action in the form of cease and desist orders and affirmative action including, but not limited to, back pay. Section 10 also provides that these remedies shall be enforceable by the United States Courts of Appeals, and further, that any aggrieved party may petition the court for review of the Board's order. In the execution of this specific grant of power, the NLRB has promulgated voluminous rules and regulations setting forth procedures for the investigation of charges administrative hearings and appeal mechanisms. 29 CFR 101, _et seq_.

The Railway Labor Act does not confer any such authority upon the National Mediation Board. Conduct on the part of a carrier which interferes with an employee's rights under the RLA shall be punishable under Section 2, Tenth of the Act, as a misdemeanor. The federal courts have also found that Sections 2, Third and Fourth provide a private right of action against a carrier by an employee or a _certified_ union for conduct which interferes with employee rights. _See_, _e.g._, _Conrad v. Delta_

Airlines, Inc., 494 F.2d 914 (7th Cir. 1974); Scott v. American Airlines, 488 F.Supp. 415 (E.D.N.Y. 1980). Such civil and criminal remedies are the only remedies available for misconduct under the RLA.

However, recently the NMB has sought to find a specific grant of remedial authority for itself where none exists. The NMB has reasoned that its limited representation case authority allows for the investigation, adjudication and remedy of unfair labor practices. The Board apparently finds this authority in Section 2, Ninth, which provides in pertinent part, as follows:

> [T]he Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

While this section does authorize the Board to take necessary measures to determine employees' true wishes in regard to representation, it does not allow for the remedy of conduct which the NMB has unilaterally determined is in violation of the Act. Unfortunately, the Board has recently failed to recognize this limitation on its authority.

The NMB's first major step in the assumption of this remedial authority came in Laker Airways Ltd., 8 NMB 236 (1981). There, the Board concluded that employer conduct prevented employees from participating in an election free from interference and therefore violated Section 2, Fourth and Ninth. In its investigation, the Board examined the carriers' conduct against standards established by the NLRB under its unfair labor practice procedure. The NMB then issued an NLRB-type remedial order requiring that the carrier post notices of a violation of the Act, and mail copies of the notice to eligible employees. The Board also ordered a new election utilizing a changed ballot form which it reasoned would better allow for the expression of employee free choice.

In American Inter-Island, Inc., 8 NMB 410 (1981), the Board concluded that employer conduct, including the discharge of several employees, amounted to "apparent violations of the Act." Since the employees were seeking reinstatement through a court proceeding, the Board determined they were eligible to vote. When the carrier subsequently sought to overturn the results of the election based upon alleged misconduct on the part of the union, the NMB denied the carriers motion, citing the employer's own conduct (i.e., two wrongs do make a right) and the employer's lack of standing to participate in the case. 8 NMB 552 (1981).

The Board has further demonstrated its pro union bias in its recent arrogation of authority in the case of Pioneer Airlines, 10 NMB 240 (1983). There, the employer protested what it contended was a deliberate misrepresentation on the part of the union in an election campaign. The union apparently misrepresented to the Wall Street Journal that it had recently won an election to represent a number of Pioneer's pilots. The story was printed on the front page of the Journal shortly before the election was actually to take place. The employer claimed that this stunt destroyed the chance of a fair election and requested the Board to postpone the election in order for the misrepresentation to be overcome. The NMB denied the employer's motion, ruling that the single misrepresentation was not sufficient to destroy laboratory conditions.

The NMB has continued to expand the scope of its new-found unfair labor practice authority. It has expanded the use of its amended ballot procedure and issued other cease and desist orders. See, e.g., Jet America, Inc., 10 NMB 275 (1983); Rio Airways, 11 NMB No. 28 (1983); and, Sea Airmotive, Inc., 11 NMB No. 33 (1983). While the NMB has apparently not yet begun issuing back pay orders, it has taken the position that its findings of election interference are "binding on the Courts." Transkentucky Transportation Railroad, Inc., 8 NMB 495, at 499 [citing Aircraft Mechanics Fraternal Association v. United Airlines, 406 F.Supp. 492 (N.D. Cal. 1976) and Texidor v. Ceresa, 590 F.2d 357 (1st Cir. 1978)].

The NMB's actions in assuming this unfair labor practice remedial authority are wrong for several reasons. First, the statute itself contains no such grant of authority. Second, even if the authority existed, the NMB's refusal to recognize the Carrier as a party to its proceedings to review alleged misconduct and establish remedies is a blatant deprivation of due process rights. Third, the lack of judicial review of the Board's actions in this regard is a further deprivation of due process. Finally, the NMB's unwarranted actions with regard to alleged unfair labor practices are improper because they are being exercised with the same blatant pro-union manner as other recent aspects of NMB representation case handling procedures.

Under the Railway Labor Act or the Labor Management Relations Act, conduct which interferes with employee rights should be effectively prohibited. However, that prohibition should come from a legitimate grant of authority and be exercised with regard to the due process rights of all parties involved. If the remedial actions afforded by the Railway Labor Act are thought to be insufficient, (which they certainly are when compared to those under the LMRA), then the deficiencies should be rectified through legislative action. The NMB should not be allowed to continue its course of unwarranted arrogation of authority and creation of unfair labor practice case handling procedure through administrative fiat.

Laboratory Conditions

The NMB claims to follow the "Laboratory Conditions" doctrine established by the NLRB in evaluating pre-election circumstances which may affect the outcome of a representation case. Laker Airways Ltd., 8 NMB 236 (1981). That doctrine was announced by the NLRB in General Shoe Corp., 77 NLRB 124 (1948), and holds that the agency is to conduct its elections in a laboratory under conditions which determine the "uninhibited desires of the employees." The NLRB recognized in that case that there may be pre-election conduct which does not amount to an unfair labor practice but nevertheless spoils the laboratory conditions. In that case, the election is to be conducted over again. 77 NLRB at 127.

Unfortunately, the NMB has taken a one-sided approach to the laboratory conditions standard. Any conduct on the part of the carrier which is determined to have spoiled the conditions will result in a rerun election, often with modified voting procedures intended to "remedy" the breach. See, Laker Airways, supra; Mercury Services, Inc. 9 NMB 312 (1982).

On the other hand, conduct on the part of the union which violates these laboratory conditions will not result in the postponing or rerunning of an election. For example, in Pioneer Airlines, supra, the NMB could easily have ruled that the untruthful story printed in the Wall Street Journal spoiled the laboratory conditions, and therefore postponed the election. Clearly, even if the union's actions in misrepresenting information to the press did not amount to unlawful conduct, it certainly breached the laboratory conditions. However, as noted above, the NMB took no action in response to this misrepresentation.

A further example of the NMB's failure to acknowledge a breach in laboratory conditions by the union can be seen in the representation case involving Continental Airlines and the Teamsters. Having ignored the drastic changes in the workforce due to the bankruptcy petition, the NMB refused to consider conduct on the part of the union in the form of blatant misrepresentations and attacks on the personal character of Continental officers which undeniably destroyed laboratory conditions among the electorate. The NMB remained, and still remains, undaunted in its intent to conduct an election which cannot possibly reflect the true and "uninhibited desires" of the employees of Continental.

The standard enunciated in General Shoe, supra, is an appropriate one for evaluating pre-election conditions under either the RLA or the LMRA. However, to serve any purpose, the standard must be one which applies not only to carrier conduct, but also to conduct by the union or even a third person which breaches the laboratory conditions. As recently used by the NMB, the standard is simply another justification for its biased and improper handling of representation disputes.

Judicial Review of Agency Action

The Railway Labor Act contains no express authorization for judicial review of National Mediation Board action. The United States Supreme Court has held that the Act does not provide judicial review of NMB decisions on the merits of representation cases. Switchmen's Union v. NMB, 320 U.S. 297 (1943). The Court explained that Congress did not intend to have judicial review of NMB actions in representation disputes because the agency role was to be limited, and final.

> Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but

> believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain.

Id. at 303.

The Court went on to describe the function of the Board in its representation case role as that of a referee and explained that agency decisions were to be final.

> The statutory command that the decision of the Board shall be obeyed is . . . explicit. Under this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave no enforcement functions. It was to find the facts and then cease . . . . [T]he intent seems plain - the dispute was to reach its last terminal point when the administrative finding was made.

Id. at 305.

Consistent with the Supreme Court's decision in Switchmen's Union, the federal courts have disclaimed authority to review NMB decisions regarding representation case procedure. See e.g. British Airways v. NMB, 685 F.2d 52 (2d Cir. 1982); Teamsters v. BRAC, 402 F.2d 196 (D.C. Cir.), cert. denied, 393 U. S. 848 (1968). Some courts have criticized this lack of review but have followed the ruling in Switchmen's Union. See, Sedelia Marshall-Boonville v. NMB, supra.

This lack of judicial review has greatly contributed to the problem of the NMB's improper handling of representation cases. The NMB has been able to hide behind this shield of nonreviewability while relying upon its claimed grant of unlimited discretion in taking the various actions in regard to representation disputes discussed above. In criticizing this lack of review under the Railway Labor Act, one commentator has explained that the primary purpose of judicial review is to protect minority parties, and the agency itself, from the pressure of predominate groups. Jaffe, The Right to Judicial Review, 71 Harv. L. Rev. 401, 431 (1958). This is a pressure which is certainly visible in the decisions of the NMB.

Besides the effect of bias which this lack of review has on agency actions, the lack of review raises serious constitutional questions with regard to the agency's improper development of unfair labor practice procedures. As discussed above, the NMB has recently developed unfair labor practice doctrines in areas where it has no authority. Through its representation case handling authority, the Board has shown a willingness to investigate and rule upon carrier conduct. The agency has also expressed its belief that its rulings should be binding upon the courts. Transkentucky Transportation Railroad Inc., supra. In light of the criminal sanctions contained in the Railway Labor Act for unfair labor practices, the NMB's actions raise a question of Fifth and Sixth Amendment rights. An agency should not have the authority to unilaterally rule upon conduct which may carry a criminal penalty.

Fortunately, several Courts of Appeals have seen fit to review agency action in limited circumstances. As the Fifth Circuit explained in its decision in Russell v. NMB, supra, the courts have developed two apertures for judicial review of NMB action. First, judicial review will be permitted where there has been a "substantial showing" of a violation of constitutional rights. Second, review is proper where Board actions are "in excess of its delegated powers and contrary to a specific prohibition in the Act." United States v. Feaster, 410 F.2d 1354 (5th Cir.) cert. denied, 396 U. S. 962 (1969).

The court in United States v. Feaster, supra, summed up the exception to the lack of judicial review under the RLA as follows:

> Under this exception access to the courts is accorded only if the Mediation Board's determination is infused with error which is of a *summa* or *magna* quality as contraposed to decisions which are simply *cum* error. Only the egregious error melds the Board's decision into justiciability. Lesser malignancies thwart the jurisdiction of the Courts.

Id. at 1368.

The few cases in which a federal court has actually overturned NMB action are somewhat heartening in that they represent possible protection against egregious misconduct by the agency. In addition to Russell v. NMB, supra, this is seen in International In-Flight Catering Co. v. NMB, 555 F.2d 712 (9th Cir. 1977) where the Ninth Circuit held that the NMB had failed to comply with the Railway Labor Act by accepting improper union authorization cards. However, these decisions are not to be regarded as evidence of sufficient judicial safeguards against improper agency conduct. They should be viewed as examples of how serious agency misconduct must be before any protection exists.

In comparison to the lack of judicial review of NMB cases, review does exist for final orders of the NLRB under Section 10(f) of the LMRA. However, this review applies only to final orders which are entered in unfair labor practice cases under Section 10(c) of the Act. Decisions and directions of elections in representation cases under Section 9(c) are not final orders and review may only be obtained incidental to review of an order in an unfair labor practice case. American Federation of Labor v. NLRB, 308 U. S. 401 (1940).

Review of representation case handling independent of an unfair labor practice case is similar to the scope of review under the Railway Labor Act. The Supreme Court has explained that review is limited to cases involving "extraordinary circumstances." Leedom v. Kyne, 358 U. S. 184 (1958). Courts have granted review where the Board has violated an express provision of the statute or the aggrieved has no other means of obtaining review. See, e.g., Hirsch v. McCulloch, 303 F.2d 208 (D.C. Cir. 1962).

While the scope of judicial review of preliminary agency action in representation cases is no broader under the LMRA than under the RLA, the right to review of final orders affords a level of protection not available under the RLA. If a party feels that the NLRB has improperly ruled on a unit determination or voter eligibility issue, it may refuse to bargain with the union, if elected. The employer may ultimately have the Board's actions reviewed by the Court of Appeals on appeal of a final Board order. Even though this level of review is not as direct as may be desired, it does provide ultimate judicial review of Board action. The mere availability of this review, however distant in the future, serves to restrict agency action. In addition, under NLRB procedure, the parties have the right to preliminary administrative review by the Regional Director and ultimately the Board itself.

In summary, neither the LMRA nor the RLA provide direct judicial review of representation case handling procedure. Review is available in extremely limited cases of egregious misconduct under either statute. However, even in less egregious cases, agency action is ultimately reviewable under the LMRA through judicial review of final NLRB orders. In addition, the LMRA provides for internal agency review with full due process rights afforded the parties. The near absolute lack of such review under the RLA has greatly contributed to the abusive, arbitrary conduct of the NMB. Particularly in consideration of the NMB's recent arrogation of unfair labor practice authority, the need for judicial review of the agency's actions is obvious.

COLLECTIVE BARGAINING AND MEDIATION UNDER THE RAILWAY LABOR ACT AND THE LABOR MANAGEMENT RELATIONS ACT

The Railway Labor Act and the Labor Management Relations Act each require that employers and employees engage in collective bargaining in order to avoid disputes with regard to the basic terms and conditions of employment. The purpose of these requirements is to avoid interruptions to commerce by labor disputes. However, because of the fear of strikes in the railway industry at the time the legislation was drafted, restrictions placed upon employer and employee economic self-help are much greater under the Railway Labor Act than under the Labor Management Relations Act. As a result of this overriding purpose to avoid strikes and lockouts, collective bargaining under the RLA is a highly structured process often involving intervention by the National Mediation Board. As with representation case procedure under the two statutes, collective bargaining and mediation under the Labor Management Relations Act is a more efficient and just system than under the RLA.

Under the Railway Labor Act, Section 2, Seventh, a carrier may not change the rates of pay, rules, or working conditions of its employees, except in accordance with the provisions of the Act. Section 6 requires either the carrier or the employee representative to give thirty-days written notice of any intended change in agreements affecting rates of pay, rules or working conditions. If the parties are unable to reach an agreement through negotiations, either party may invoke the services of the NMB, or the Board may initiate its services itself. If the services of the NMB are not requested or offered within ten days of the termination of conferences between the parties, either party may then change the status quo.

Should the mediation provisions of the Act be invoked, the NMB obtains absolute discretion in controlling the length of mediation and the decision when, and if, to terminate. The Courts will not interfere with the Board's authority unless it is established that the Board has acted "on a basis that is completely and patently arbitrary and for a period that is completely and patently unreasonable." International Association of Machinists v. National Mediation Board, 425 F.2d 527, 537 (D.C. Cir 1970). No federal court decisions have been found in which a party has been able to meet this burden and obtain a court order ending mediation.

If the NMB determines that mediation has failed, the agency will encourage the parties to agree to binding interest arbitration to settle the dispute. If either party refuses to engage in arbitration, the NMB commences a thirty-day cooling off period before releasing the parties to self help. During that time the NMB will normally continue its efforts at mediation. Even the passing of this thirty-day period does not guarantee the release of the parties for economic action. If a dispute threatens "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country with central transportation services," the NMB will notify the President who may create an Emergency Board to hear the dispute. 45 U.S.C. Section 160.

A recent study published by the Bureau of National Affairs indicates that mediation under the Railway Labor Act has an average duration of six months and sometimes lasts over a year. BNA Daily Labor Report (12-9-82). The study also reports that parties under the Railway Labor Act spend 45% of the life of a collective bargaining agreement in negotiation compared to 6% for parties under the LMRA. The United States Supreme Court has described the process under the RLA as "almost interminable." Detroit and Toledo Shoreline v. United Transportation Union, 396 U. S. 142, 149 (1969).

Unlike the Railway Labor Act, under the LMRA the parties have the right to engage in economic action unless they have agreed to limit that right through a no-strike, no-lockout provision in their collective bargaining agreement. Upon the expiration of the agreement, the parties may engage in economic action. The parties to the collective bargaining process can regulate through their respective power and influence when they may resort to this economic self help by controlling the expiration date of the contract. The parties may engage in mediation before the Federal Mediation and Concilation Service, however, mediation remains voluntary at all times. Either party may unilaterally declare impasse at any point in the mediation and resort to self-help. The FMCS may not hold the parties in mediation against their wishes.

The primary difference between the mediation of collective bargaining disputes under the Railway Labor Act and the Labor Management Relations Act is that under the LMRA the parties are free to cease mediation at any point while under the RLA the parties are bound to remain in mediation until a third party government agency, the NMB, decides to terminate the process. This government control over mediation and the exercise of economic action in collective bargaining was understandable fifty years ago when the Act was passed. However, the drastic changes in the air and railroad industries since that time have made this federal protection unnecessary and undesirable. There is no longer any reason why employers and unions in these industries should not be allowed to engage in economic disputes to the same extent as their counterparts in other industries where free enterprise based upon economic strength is allowed to function unrestrained. Such freedom to engage in economic action is totally in keeping with the concept of deregulation.

A second major problem with mediation under the Railway Labor Act is the pro-union bias exhibited by the NMB in the exercise of its mediation role. By vesting the Board with absolute discretion in determining when parties may be released to engage in economic action, the NMB is able to maximize economic strength of the union while threatening the employer with a strike when it is most vulnerable.

An example of this abuse is seen in the NMB's handling of the mediation between Continental Airlines and the International Association of Machinists last year. The NMB held the parties in mediation for several months over the issue of wages. Continental had offered a small increase but the union, attempting to set a pattern for its negotiations with more profitable carriers, was holding out for more. Continental was content to remain in mediation because during that period it was paying wages at the current contract rate, below the rate already offered. However, Continental made the NMB aware of its tenuous financial condition and cautioned that if the union were released to go on strike during the height of the travel season, it would have severe consequences for the carrier. Despite this notice, the NMB held the parties in mediation until the travel season. When the parties were released and the union went on strike, the financial burden to Continental was devastating.

Another example of the NMB's abuse of its authority in this area involves Frontier Airlines which is currently being held in mediation with the IAM. Frontier is in an obverse situation from that of Continental; Frontier is seeking wage consessions from the union, but is forced to continue paying wages at the higher contract rate until released from mediation. Therefore, Frontier is being financially drained while the NMB refuses to release the parties. This type of agency control and coercion during the collective bargaining process cannot occur under the LMRA.

In conclusion, mediation of collective bargaining disputes under the Railway Labor Act suffers from the same twofold problem as representation disputes under the Act: First, the provisions of the Act itself are anachronistic and out of step with the economic realities of the modern railroad and airline industries; and, second, the National Mediation Board has exhibited a strong pro-union bias in the execution of its duties in this regard. The artificial means in which the agency is able to forestall economic action in order to benefit the union is completely out of line with the concept of a deregulated industry operating in a free market. Congress should recognize the problems being experienced by the carriers in these industries and legislate change to resolve these problems.

SECONDARY PRESSURE UNDER THE RAILWAY LABOR ACT AND THE LABOR MANAGEMENT RELATIONS ACT

Secondary pressure in labor relations is economic pressure exerted by a union on a party with whom the union does not have a dispute (the secondary party) for the purpose of exerting indirect economic pressure on the employer with whom the union does have a dispute (the primary party). One example of such pressure would be if a union were to picket a secondary supplier in order to pressure the supplier into ceasing business relations with the primary employer. The actions of the secondary supplier would place indirect economic pressure on the primary employer. If allowed to occur unrestrained, secondary pressure can amount to a form of economic blackmail against employers.

Recognizing the danger of unrestricted secondary activity, Congress addressed the problem in the 1947 Taft-Hartley amendments to the National Labor Relations Act. Along with other union unfair labor practices outlawed by Section 8(b) of the amendments was the prohibition against certain types of secondary activity by unions contained in Section 8(b)(4). The thrust of that section was to prohibit union conduct which was intended to induce strikes by the employees of a secondary employer in order to exert economic pressure (such as the cessation of business) on a primary employer. The amendment also provided for injunctive relief against unlawful secondary activity through Section 10(l) of the Act and jurisdiction for a federal court suit for damages under Section 303. C. Morris, The Developing Labor Law 1134 (2d Ed. 1983).

The Landrum-Griffin amendments to the Act in 1959 modified the prohibition against secondary activity contained in Section 8(b)(4) to rectify certain deficiencies in the provision which had been recognized during the intervening period. Specifically, the later amendments broadened the scope of the secondary party to include individual employees and the secondary employer itself as well as groups of employees. Section 8(b)(4) was divided into two subsections, (A) and (B), to clarify these changes. In addition, the ban on "hot cargo" agreements was enacted as Section 8(e). Id. at 1134-1135.

The secondary boycott provisions created by the Taft-Hartley and Landrum-Griffin amendments to the National Labor Relations Act are one of the primary sources of protection against improper union conduct. The prohibition against secondary strikes and picketing and hot cargo agreements protect employers from potentially crippling union coercion.

Unfortunately, the protection enjoyed by employers under the Labor Management Relations Act is not shared by carriers covered by the Railway Labor Act. The RLA contains no provisions analogous to Section 8(b)(4) or 8(e). The United States Supreme Court has expressly held that these provisions are not applicable to employers under the RLA. Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U. S. 369 (1969).

Employers under the RLA have proffered various legal theories seeking protection from secondary pressures and have met with various degrees of success. In *Ashley, Drew and Northern Ry. v. United Transportation Union*, 625 F.2d 1357 (8th Cir. 1980) the court upheld an injunction of a strike against a secondary employer, the Chicago, Rock Island and Pacific Railroad. The Court explained that since the union had no labor dispute with Rock Island, the Norris LaGuardia anti-injunction provision would not apply to the injunction sought by the secondary employer. Although this theory does not protect the primary employer directly, it does provide relief from the secondary pressure, if the secondary employer is willing to petition for the injunction.

Other courts considering the injunction of secondary activity have looked to see whether the secondary employer seeking the injunction was "substantially aligned" with the primary employer and therefore subject to picketing. In 1978, the Brotherhood of Railway Clerks engaged in a lengthy strike against the Norfolk and Western Railway which involved the picketing of a number of secondary carriers. Where substantial alliance was found through the mutual participation in a strike insurance program, the courts refused to issue an injunction. *See*, *e.g.*, *Alton v. Southern Ry. Co.*, 99 LRRM 2323 (D.D.C.), aff'd. (D.C. Cir., September 15, 1978), *cert*. *denied* 439 U. S. 996 (1978). On the other hand, the United States District Court for the Western District of New York found that Conrail had not participated in the strike insurance plan and was therefore not substantially aligned with the Norfolk and Western. The Court granted the injunction sought by Conrail. Consolidated Rail Corp. v. BRAC, 99 LRRM 2607 (W.D. N.Y. 1978).

Other than the possibility of such injunctive relief for a secondary employer, employers faced with secondary pressure under the RLA can only seek relief if one of the other parties involved is covered by the LMRA. If the primary dispute is with an employer covered by the LMRA, secondary pressure against a carrier under the RLA may be enjoined by the NLRB. Marriott In-Flight Services v. Local 504, 557 F.2d 295 (2d Cir. 1977). By contrast, the NLRB has specifically held that employers subject to the RLA are not covered by the hot cargo provision of Section 8(e) even if the other employer is covered by the LMRA. IBEW Local No. 3, 244 NLRB 357 (1979).

In summary, employers covered by the RLA have no direct protection against secondary pressures exerted by unions. Although limited injunctive relief may be available for a secondary employer, there is no specific prohibition against secondary activity as is contained in Sections 8(b) and 8(e) of the LMRA. The primary employer cannot petition for injunctive relief, nor does it have a cause of action for damages as allowed under Section 303 of the LMRA. This is particularly unfortunate for carriers in the transportation industry because of the large potential for this type of abuse in that industry. Because of the direct contact between carriers and numerous other employers, including shippers, other carriers, and receivers, railroads and airlines are particularly vulnerable to secondary pressure. In an era of deregulated transportation industries, protection from such secondary pressure against carriers in those industries is essential. Congress should recognize this problem and take steps to remedy it through legislative action.

CONCLUSION

Labor relations in the airline and railroad industries are being severely strained by the inadequate and outdated provisions of the Railway Labor and the recent capricous and biased handling of representation disputes and mediation by the NMB. What was designed to serve as a safeguard against disruption to the free flow of commerce has become a serious impediment to the expression of employee freedom of choice and the efficient resolution of labor-management disputes. Congress should take note of the significant problems faced by carriers and individual employees as they attempt to deal with organized labor under the constraints of this often unjust and unworkable statutory scheme.

While no beneficial purpose would be served by precipitous legislative action, the Senate and the House of Representatives should each begin thorough examinations into the state of labor relations in these vital transportation industries. Special attention should be paid to the areas of carrier participation and due process rights in the representation dispute process, judicial review of agency conduct, and the need for adequate protection against unfair labor practices including unlawful secondary pressure. By careful review of testimony and evidence presented by parties in the industry, the need for extensive legislative reform will become obvious.

After due consideration, Congress may determine that the most appropriate and expeditious means of accomplishing the needed legislative reform would be through repealing the Railway Labor Act and abolishing the National Mediation Board, bringing the railroad and airline industries under the coverage of the Labor Management Relations Act. On the other hand, extensive amendment of the RLA with a concomitant revision and delineation of the limits of NMB authority may be an appropriate means of achieving the same needed goal. The purpose of this paper is not to advocate the specific manner in which Congress should act, but simply to point out the urgent need for legislative action.

Senator Nickles. Mr. Phillips, I appreciate your comments and your prepared statement. It is an impressive statement.

You have compared the Railway Labor Act to Taft-Hartley. You mentioned there is no provision for decertification under the Railway Labor Act.

You also mentioned extensively that there are no judicial review provisions. Did you do a lot of the legal work in dealing with Continental's bankruptcy and also in the battle that was fought up here in the *Bildisco* case, and so on?

Mr. Phillips. Well, Richard Wyatt here has done more of the actual work than I have at Continental.

Senator Nickles. When we worked in Congress on the *Bildisco* decision, there was a great deal of interest, in Continental's case. I was not aware of whether you were handling the case or actually involved for Continental. Were you, or was your firm, charged with that?

Mr. Phillips. Do you mean with respect to the lobbying aspect?

Senator Nickles. The *Bildisco* decision.

Mr. Phillips. No, sir. We are familiar with the decision.

Senator Nickles. Does the *Bildisco* decision and the subsequent congressional codification of that decision have any impact on Continental's current problems with the National Mediation Board?

Mr. Phillips. May I ask Mr. Wyatt to comment on that?

Senator Nickles. Sure.

Mr. Wyatt. I do not think the *Bildisco* decision would directly reach Continental's problem with the National Mediation Board. I do think that it would, in spirit, reach the problem.

Although it was a case that addressed the National Labor Relations Board, *Bildisco* teaches Federal agencies that claim to have overlapping jurisdiction in the context of a bankruptcy is that they should be sensitive in enforcing their statute, in trying to perform what they claim is their function under their statute. They should be extremely sensitive to the problems of reorganizing employers, whether they are Railway Labor Act carriers or National Labor Relations Act employers.

In this particular case, as Mr. Phillips mentioned earlier, you had the National Mediation Board conducting an election where the majority of the employees were not working for the carrier, and in fact, today, as we pointed out to the National Mediation Board at the time, we had no idea that most of those people who had been furloughed would come back, since the pay and benefits had been drastically cut.

In point of fact, in the current group that the election was conducted among, only 50 percent of the prebankruptcy employees have returned to work, although jobs have been offered to almost all of the others. One-third of the current group are new hires who did not participate in the election at all, and that segment of the employee population will continue to grow.

So I guess in answer to your question, I think *Bildisco* would require or would suggest strongly to a Federal agency that it should be extremely sensitive to the bankrupt and to its employees, particularly a labor agency.

Senator Nickles. Is the National Mediation Board subject to the new bankruptcy procedure in your opinion?

Mr. **Wyatt**. I do believe the National Mediation Board is subject to the Bankruptcy Code and subject to the automatic stay provisions, which were the provisions that were invoked by Judge Roberts in enjoining the election.

Senator **Nickles**. As you are probably aware, we will be receiving testimony from several witnesses next week discussing the *Russell* case on alleged foot-dragging by the National Mediation Board to implement that decision.

Your testimony is equally troubling. Is Continental using its bankruptcy situation to break its unions?

Mr. **Wyatt**. If I could address that, no, sir, not at all. We have never opposed a union election on Continental.

The Board is charged with the job of creating a rational labor relations structure or craft and class, and conducting an election to determine the true wishes of the employees. That is all we asked the Board to do, was look at the carrier after bankruptcy, because we are a completely different operation, not to rely on its prebankruptcy investigation, but to look at us after the bankruptcy.

Senator **Nickles**. That bell is telling me I have another vote.

To all of our guests and witnesses, I apologize for the inconvenience of the interruptions caused by the votes. I do appreciate your statements. Next Thursday is our second day of hearings in oversight dealing with the National Labor Relations Act and the National Railway Labor Act.

We appreciate your attendance and interest in this matter.

[Additional material supplied for the record follows:]

STATEMENT OF SENATOR ALAN CRANSTON TO THE SUBCOMMITTEE ON LABOR OF THE UNITED STATES SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES

September 13, 1984

As a cosponsor and strong supporter of S. 281, I deeply appreciate this chance to express my enthusiastic support for the Performing Arts Labor Relations Amendments.

These amendments are designed to restore to workers in the performing arts the collective bargaining rights most American workers have long taken for granted.

Travelling musicians have seen many changes in the structures of their industry since 1959 that have basically denied professional musicians the ability to bargain collectively.

That year Congress recognized unique conditions then existing in the construction and apparel industries that required legislative changes in the National Labor Relations Act to bring those industries more evenly under the coverage of the Act.

It is now time to make similar changes to restore collective bargaining to workers in the performing arts.

Current law prevents the American Federation of Musicians -- the chosen bargaining agent of most musicians and the largest entertainment union in the world -- from acting on behalf of and securing labor benefits for its members.

At issue are such basic benefits as job security, pensions, unemployment insurance and social security benefits.

Through technical interpretations of existing law, employers can now treat performers as independent contractors -- not employees -- denying them all these benefits even though the working arrangement of the average musician meets many of the usual tests for employment.

Recognition of the unequal bargaining leverage of individual workers against corporate employees initially led to the establishment of unions and recognition of the basic right of workers to bargain collectively.

I've long supported the collective bargaining process, which historically has improved working conditions for all workers, union and non-union alike.

These amendments recognize that an unequal and unfair bargaining situation has developed in the music industry.

Their enactment will give performers a more even chance to bargain for the working conditions and benefits most workers now commonly enjoy.

I support their enactment.

UAW'S RESPONSE TO TESTIMONY OF ROBERT PRICE

before the

Subcommittee on Labor

Committee on Labor and Human Resources

U. S. Senate

September 13, 1984

Robert Price, an employee at the Electric Boat Division of General Dynamics Corporation in Groton, Connecticut is scheduled to testify before the Subcommittee on Labor of the Labor and Human Resources Committee. It is anticipated that Price's testimony will deal with events surrounding two strikes which were conducted at the Electric Boat Division by the Marine Draftsmen Association (MDA) in 1979-80 and 1983-84. The MDA affiliated with the International Union, UAW in 1982. The UAW was not invited to appear at these hearings. It is making the following statement available to the public to set the record straight.

1. Price has portrayed himself as just another employee, who is simply sticking up for the rights of individual workers.

   Fact: Price has been and continues to be represented by attorneys for the Center on National Labor Policy, an anti-labor group which we understand is associated with the National Right to Work Committee. Price has a long history of anti-union activities, having crossed the MDA's picketlines to break their strikes in 1979 and 1983; having opposed the affiliation of the MDA with the UAW in 1982; having resigned from membership in the UAW in 1983; and having led an unsuccessful effort to decertify the Union in 1984.

2. Price has complained about the Union's procedures for calling strikes, contending that they are not "democratic" because the workers allegedly have not been allowed to vote on whether to authorize strike actions.

   Fact: Article 50, section 1 of the UAW Constitution (a copy of which is attached), expressly requires that the membership must vote in favor of strike authorization by a 2/3rds vote in a secret ballot election, before any strike action can be taken.

   Fact: Prior to the commencement of the strike in 1983, a secret ballot vote was in fact conducted by the MDA-UAW Local Union. The workers voted overwhelmingly in favor of strike authorization by a vote of 1247 to 265.

Fact: Prior to the commencement of the strike in 1979 (before the MDA affiliated with the UAW), on two separate occasions at general membership meetings, motions to grant the MDA bargaining committee the authority to call a strike were overwhelmingly approved by the membership. The second motion that was adopted also directed the bargaining committee not to bring the company's last offer back for a vote by the entire membership, unless the committee was prepared to recommend it. Because the Company's final offer contained numerous concessions and was generally unacceptable, the bargaining committee was precluded by that motion from conducting a general vote on the company's offer.

3. Price has raised numerous objections to the circumstances and procedures connected with a decertification election that was conducted by the NLRB with respect to the MDA-UAW Local Union on June 8, 1984.

Fact: The NLRB has rejected all of the challenges brought by Price against the decertification election. Specifically, the NLRB Regional Director has ruled that:

-- the decertification petition filed by a striker which served as the basis for the June 8th election was valid;

-- the various objections filed by Price challenging the manner in which the election was conducted are without foundation.

Fact: Based upon the decision of the NLRB Regional Director dismissing Price's objections to the decertification election and challenges to certain ballots, it is likely that a tally of all the ballots would establish that a majority of the employees have voted in favor of continued representation by the MDA-UAW Local Union. Instead of accepting the will of the majority as expressed in this democratic election, Price and his "right-to-work" allies have recently filed unfair labor practice charges against the company and the union contending that they violated the law by entering into a new contract in August 1984 while the decertification election was still pending. However, the NLRB has previously ruled (in decisions issued by the Dotson Board) that an employer still has a duty to bargain with a union, and may enter into a new contract with the union, notwithstanding the pendency of a decertification election. See Dresser Industries, Inc., 264 NLRB No. 145 (1982); Benchmark Industries, 116 LRRM 1005 (1984). Thus, the unfair labor practice charges filed by Price in an effort to circumvent the results of the decertification election do not have any validity. It is important to note that the results of the decertification election still will be dispositive of whether or not the employees will continue to be represented by the MDA-UAW Local Union; the fact that the company and the union entered into a contract during the pendency of the election in no way alters this fundamental democratic principle.

Fact: Although Price has objected to the filing of the decertification petition by a striker and the holding of the decertification election prior to the first anniversary date of the commencement of the strike, the fact is that Price originally filed his own decertification petition on May 14, 1984 -- also prior to the anniversary date of the strike. However, Price quickly withdrew his petition after discovering that the striking employees would be eligible to vote in the decertification election. It appears to us that Price wanted the decertification petition filed and the decertification election held after the anniversary date of the strike, so that all of the striking employees — a majority of the workforce -- would be precluded from voting. Thus, it appears that Price was not interested in having an election to determine the wishes of a majority of the employees in the bargaining unit on whether they want to continue to be represented by the MDA-UAW Local Union. Rather, it seems that he was simply interested in getting rid of the Union, by structuring the election so that only those employees who crossed the picketlines — a minority of the total workforce — are allowed to participate. Clearly this is contrary to the democratic principles embodied in the Taft-Hartley Act.

4. Price has objected to the union security agreement negotiated by the MDA-UAW Local Union, and suggested that such agreements should be prohibited.

Fact: This is the same position which has been advocated for years by the National Right to Work Committee and its associates. Congress has always rejected this position, and has expressly permitted such union security agreements, except where states have enacted so-called "right-to-work" statutes.

Fact: Invalidating union security agreements would be inequitable. Under present law, the MDA-UAW Local Union is required to represent all employees in the bargaining unit — regardless of whether they are members of the Union. Specifically, the Union must fairly represent non-members such as Price both in grievance and arbitration proceedings and in contract negotiations. Since the Union is required by law to represent non-member employees, it is only fair to require those non-member employees to pay their fair share of the costs associated with grievances, arbitrations, and contract negotiations. This is all that is required under the union security agreement.

5. Price has complained about the MDA's conduct of the strike in 1979-80, alleging that:

-- the MDA allegedly failed to tender a proper notice to the company before going out on strike;

-- bad faith bargaining by the MDA was responsible for the strike;

— the leadership of the MDA amended the union's bylaws to restrict the ability of employees to resign from the union during the strike and to impose larger fines on strikebreakers, without giving the membership an adequate opportunity to consider the amendments.

Fact: The NLRB subsequently ruled that the notice tendered by the MDA to the company was in fact lawful.

Fact: The NLRB subsequently ruled that the company was guilty of committing over 50 violations of the Taft-Hartley Act, and that these unfair labor practices were responsible for precipitating and prolonging the strike.

Fact: The entire membership of the MDA was given advance notice of the proposed changes in the bylaws, and the opportunity to vote on the changes at a membership meeting. The changes in the bylaws were approved overwhelming at that membership meeting.

6. Price has alleged that the UAW promised to provide members of the MDA with "medical insurance" in order to induce them to affiliate with the UAW in 1982:

Fact: During the discussions on the affiliation of the MDA with the UAW, the UAW explained that one of the advantages of belonging to the UAW is that it has a strike fund and provides strike assistance benefits when members go out on strike. These strike benefits include temporary health insurance payments, in situations where an employer discontinues the employees' health insurance coverage during a strike. The UAW does not provide any health insurance benefits to its members in non-strike situations.

7. Finally, Price has complained that the UAW only represents the interests of a few employees, rather than the majority of the workers, and that it urged the employees to ratify the contract which was recently agreed to by the MDA-UAW Local Union and General Dynamics in August 1984 because of selfish institutional interests.

Fact: The UAW recommended that the employees accept the contract because it represented the only hope of ending a very difficult 14 month strike and getting some of the strikers back their jobs. Pursuant to the UAW Constitution, the contract was submitted to the membership of the MDA-UAW Local Union for their consideration, and a majority of the members voted to ratify the contract.

* * * * *

For further information, please contact Alan Reuther, UAW Assistant General Counsel, 1757 N Street, N. W., Washington, D. C. 20036; (202) 828-8500.

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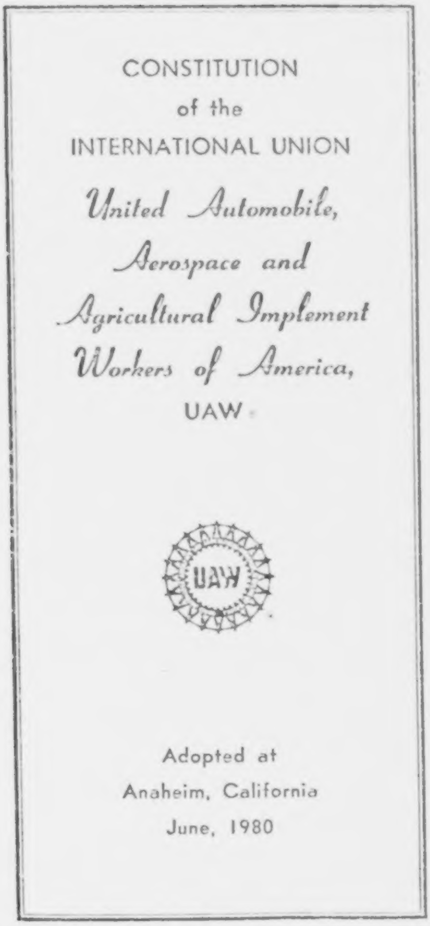
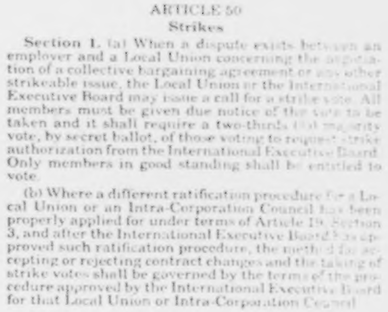


CONSTITUTION
of the
INTERNATIONAL UNION

United Automobile,
Aerospace and
Agricultural Implement
Workers of America,
UAW

Adopted at
Anaheim, California
June, 1980



ARTICLE 50
Strikes

Section 1. (a) When a dispute exists between an employer and a Local Union concerning the negotiation of a collective bargaining agreement or any other strikeable issue, the Local Union or the International Executive Board may issue a call for a strike vote. All members must be given due notice of the vote to be taken and it shall require a two-thirds (⅔) majority vote, by secret ballot, of those voting to request strike authorization from the International Executive Board. Only members in good standing shall be entitled to vote.

(b) Where a different ratification procedure for a Local Union or an Intra-Corporation Council has been properly applied for under terms of Article 19, Section 3, and after the International Executive Board has approved such ratification procedure, the method for accepting or rejecting contract changes and the taking of strike votes shall be governed by the terms of the procedure approved by the International Executive Board for that Local Union or Intra-Corporation Council

JENNINGS RANDOLPH
WEST VIRGINIA

COMMITTEES:
ENVIRONMENT AND PUBLIC WORKS
LABOR AND HUMAN RESOURCES
VETERANS AFFAIRS

United States Senate
WASHINGTON, D.C. 20510

September 17, 1984

Honorable Don Nickles
Chairman
Subcommittee on Labor
SH 608, U.S. Senate
Washington, D.C. 20510

Dear Don:

Enclosed is a statement prepared by Raymond Marshall Hair, Jr. of Denton, Texas. In it he describes his experiences as a musician for 24 years and his recommendations for relief for performers as expressed in S. 281, the Performing Arts Labor Relations Amendments.

I would appreciate your including Mr. Hair's statement and materials in the Labor Subcommittee hearing record on Oversight of the Taft-Hartley Act and the Railway Labor Act (September 13, 1984).

Thanks again for your courtesy in allowing Mr. Ned Guthrie, Mr. Victor Fuentealba, and Mr. Cosimo Abato to testify before the Subcommittee for this hearing.

With best wishes, I am

Truly,

Jennings Randolph
Jennings Randolph

Enclosures

STATE OF TEXAS)(
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COUNTY OF TARRANT)(
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ORAL STATEMENT OF RAYMOND MARSHALL HAIR, JR.

My name is Ray Hair. I am thirty-three years old and I reside in Denton, Texas. I have been a musician for twenty-four years. I performed my first professional engagement in Meridian, Mississippi in 1964. I hold degrees in music from the University of Southern Mississippi and North Texas State University.

I.

PROFESSIONAL BACKGROUND

In 1977, while a graduate student at NTSU, I organized the musical entertainment group YAZOO, which for a number of years provided its services in performances in many states of the United States and was listed with many national booking agents under the name "YAZOO". As the proprietor and a performing member of YAZOO, I have personally solicited musical engagements in every state of the United States. From 1979 until 1983 I taught applied percussion at North Texas State University. In June, 1983, I chose to relinquish my teaching duties and full-time performing career to become President and Secretary of the Fort Worth Professional Musicians Association, Local 72 of the American Federation of Musicians, which has jurisdiction throughout thirty-four Texas counties and represents more than 1,000 musicians who reside mainly within the D/FW metropolitan area.

II.

EXPERIENCES AS TRAVELING MUSICIAN

As leader of YAZOO I began soliciting musical engagements through booking agents. We voluntarily chose to conduct our business in accordance with American Federation of

Musicians procedures and requested all purchasers to execute A. F. of M. engagement contract forms. In 1978 I signed an A. F. of M. exclusive agent-musician contract with Bob Vincent, President of the Mus-Art Corporation in Los Angeles, and C. W. Kendall, proprietor of Ken-Ran Enterprises, Dallas, Texas, which provided for their exclusive representation of YAZOO. Vincent is founder and President-Emeritus of the International Theatrical Agencies Association, and Kendall is its immediate past president. Vincent and Kendall put us "on the road" booking generally five or six nights per week engagements of one to four weeks duration, performed mostly in hotel dance lounges and free-standing night clubs for a gross salary of eighteen hundred to twenty-five hundred dollars per week, commissionable at the rate of 15%. We were never permitted to bargain over salary. We were left to either accept or reject all engagements, and we rarely knew in advance where our next job would be. We paid our own traveling expenses, the purchaser occasionally providing hotel rooms. The purchaser, termed an "account" by the agent, was invariably represented exclusively by a certain booking agent. I was told by Kendall that all relations with the "account" must be handled through him, and to never conduct any business with the "account". Some "accounts" had been "serviced" by the same agent exclusively for lengthly periods of time. With Vincent and Kendall we began to encounter resistance to the AFM engagement contract form.

III.

ONSET OF INDEPENDENT CONTRACTOR

In April, 1978, for an engagement booked for YAZOO in Los Angeles, Vincent sent the AFM contract form along with a rider establishing our group as independent contractors. Vincent told me we would be employed only upon condition that we sign the rider. When a dispute arose later with the purchaser, it took two years of costly litigation to become separated from the contract rider and obtain a judgement and award pursuant to our AFM engagement contract. This signaled the beginning of a trend by both agents and purchasers of refusing musicians A. F. of M. contract forms and instead requiring the execution of engagement contracts establishing performers as independent contractors. Agents, in conspiracy with the purchasers, informed entertainers that their "accounts" no longer wished to execute AFM contract forms, and then went on to develop their own self-serving contracts invariably including the independent contractor designation. It became obvious that the agent's primary interest was his "account", the purchaser, whose intent is to undercut musicians bargaining strength and leave them without recourse in the event of a dispute, while simultaneously maintaining stringent employer control.

IV.

PURCHASER MAINTENANCE OF EMPLOYER CONTROL

It must be clearly understood that, even though C. W. Kendall's contract and the other agent-purchaser oriented contracts specifically establish musicians as independent contractor, the reality of the relationship between the purchaser and the musicians is that the purchaser exercises full authority and control over how musicians perform, volume levels, stage settings, attire on stage and off, rehearsal times, intermissions, substitute musicians, conduct while engaged, repertoire, other work performed elsewhere, and future employment prospects. Thus, it is customary for purchasers and their agents to exercise strict employer control while simultaneously requiring musicians to acknowledge the status of independent contractor as a condition of employment. In most cases, musicians have no opportunity to bargain; we must either accept or reject the terms of the music purchaser, who is and always has been our true employer.

V.

ACTIVITIES AS LABOR ORGANIZER

As President-Secretary of AFM Local 72 in Fort Worth, I am conscious of my duty to operate according to law. I have spent many hours studying procedural texts and surveys of labor law so that I may engage in employee organizing, representation elections, collective bargaining, the filing of unfair labor practice charges against employers, and other activities prescribed under the National Labor Relations Act.

VI.

MUSICIANS WITHOUT REMEDY

The purchasers' insistence upon the independent contractor designation coupled with stringent employer control has left musicians without adequate remedy under labor law for unfair labor practices committed by the purchaser. In June, 1984, I filed unfair labor practice charges against Metro Hotels, Inc., who refused to meet and bargain with musicians who had played there since 1979. No complaint was issued. Upon filing a petition for certification and election with 100% showing of employee interest, the Hotel fired the band. When I filed again due to the obviously discriminatory discharge, the Board again refused to issue a complaint. All along, the employer asserted that the musicians were not subject to the Act. Likewise, Six Flags Over Texas refused to bargain citing the independent contractor issue.

VII.

RELIEF NEEDED

The practice of employers and booking agents to require the establishment of musicians' independent contractor status, while retaining scrupulous employer control has created confusion among musicians, their representatives, as well as potential employers. This conspiracy, perpetrated by national associations of employers, booking agents, and others who are directed and dominated by our true employers, if not terminated will continue to cause irreparable damage and injury to thousands of working musicians in this country.

The issue here is not one of whether the Musicians Union is lazy or is asking for special privileges. The issue is whether or not this Congress is going to end the misrepresentation of employer/emoloyee relationships in this country and provide relief for those of us who are now subject to employer reprisal because we want to organize and bargain. The issue is whether or not Congress is going to continue to allow our true employers and their agents to perpetuate a virtual state of involuntary servitude, where musicians every nuance is directed by the purchaser. In the face of employer unfair labor practices, 95% of the working musicians in this country are without remedy at law. In the interest of my fellow musicians I respectfully urge the Labor Subcommittee to report S. 281 and H. R. 5107 favorably to the House of Representatives and work for its immediate enactment into law. The lives of thousands of musicians deserve nothing less than your full and complete support.

STATE OF TEXAS)(
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COUNTY OF TARRANT)(
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DECLARATION OF RAYMOND MARSHALL HAIR, JR.

My name is Ray Hair. I am thirty-three years old and I reside in Denton, Texas which is situated within the Dallas-Fort Worth metropolitan complex. I have been a musician for twenty-four years. I performed my first professional engagement in 1964 in Meridan, Mississippi at the age of thirteen, and have since performed throughout many states of the United States as a traveling musician. I hold the degree of Bachelor of Music Education from the University of Southern Mississippi and the degree of Master of Music Education from North Texas State University.

I.

PROFESSIONAL BACKGROUND

I voluntarily acquired membership in the American Federation of Musicians through AFM Local 568, Hattiesburg, Mississippi in 1973. In 1975, while a graduate student of the NTSU School of Music, I began organizing and leading various musical entertainment groups. I was the proprietor and a performing member of the musical entertainment group YAZOO which, for a number of years, provided its services in performances in many states of the United States and was listed with many national booking agents throughout the United States under the name "YAZOO".[1] I have personally solicited musical engagements for YAZOO in every state of the United States. In addition to my work as a full-time performing musician, from 1979 until 1983, I taught applied percussion at North Texas State University. In June of 1983, I chose to relinquish my teaching duties and full-time performing career to become President and Secretary of the Fort Worth Professional Musicians Association, affiliated Local 72 of the American Federation of musicians, which has jurisdiction throughout thirty-four Texas counties, and represents more than 1,000 musicians who reside mainly within the D/FW metropolitan area.

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[1] Exhibit 106, attatched and made a part hereof

II.

EXPERIENCES AS TRAVELING MUSICIAN

During early 1977, I entered into an effort to organize and promote the talents of a group of NTSU music students with female vocalist, under the name "YAZOO". As leader of the group, I began soliciting engagements through booking agents and their buyers of music by distributing pictures and promotional materials.[2] We voluntarily chose to conduct our business in accordance with American Federation of Musicians procedures and we requested all purchasers to execute A. F. of M. engagement contracts.[3] YAZOO, because of its reputation for excellent performances, came to the attention of a booking agent located in Los Angeles, California. In March, 1978, I executed an exclusive agent-musician contract with Mr. Bob Vincent, President of the Mus-Art Corporation located in Los Angeles.[4] He is the founder and President Emeritus of a national consortium of booking agents called the International Theatrical Agencies Association (ITAA). Our agreement with Vincent provided for a maximum of 15% commission on gross monies earned on all steady (i. e., three nights or more per week) engagements. After our signing with Mus-Art, Vincent entered into an exclusive arrangement with Booking Agent C. W. Kendall, proprietor of Ken-Ran Enterprises of Dallas, for the exclusive representation of YAZOO throughout the Southwestern United States. In consideration of this arrangement, Vincent promised Kendall a 5% commission on all YAZOO engagements for the duration of Vincent's agreement with YAZOO. This 5% was to be paid out of Vincent's 15% commission. C. W. Kendall is the immediate past president of the ITAA. Vincent and Kendall put us "on the road", and were responsible for booking us in eight states during a period beginning in January of 1978 and concluding in July, 1979. The jobs were generally five or six night per week engagements of one to four weeks duration, performed mostly in hotel dance lounges and free-standing night clubs for a gross salary of eighteen hundred to twenty-five hundred dollars per week. We were never allowed to bargain over salary. We were left to either accept or reject all engagements, and we rarely knew in advance where our next job would be. Agent commissions were based on these weekly gross salaries. All traveling expenses were borne by ourselves. Occassionally, the purchaser would provide complimentary hotel rooms. During our tenure with Vincent and Kendall, I began to understand how the performance location, termed an "account" by the agent, was invariably represented exclusively by a certain booking agent or agency. I was told never to conduct any business with the purchaser. I was told by Kendall that all relations with any purchaser must be handled through him. Of course, this was a practical impossibility because the purchaser in every instance directly supervised and controlled the manner and means of performances; however, all contractual details, such as salaries and return bookings were the domain of the agent. Some engagements proved to have been "serviced" by the same agent exclusively for lengthly periods of time. While with Vincent and Kendall, we began encountering resistance to the AFM engagement contract form.

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[2] Exhibits 101, 102, 103, attatched and made a part hereof
[3] Exhibits 104, attatched and made a part hereof
[4] Exhibit 105, attatched and made a part hereof

III.

ONSET OF INDEPENDENT CONTRACTOR

In April, 1978, Vincent booked us to perform in Los Angeles in July of 1978, at the "Red Onion" on Wilshire Blvd. and in August of 1978 at the "Red Onion" in Woodland Hills. The contracts[5] were sent to me for signature along with a document entitled "Amendment and Supplement to Entertainment Contract".[6] Vincent told me that the "Red Onion" would employ us only upon condition that I execute the supplement and register myself as an employer. When we performed at the Wilshire Red Onion, a dispute with our employer led to the Club's unilateral termination of the Red Onion Woodland Hills' engagement. The amendment, through its independent contractor designations, was designed to relieve the purchaser of all employer responsibilities and inhibit the musicians ability to seek remedy against the purchaser for breech of contract or for unfair labor practices. In Los Angeles Superior Court Action No. C 270 650, the Red Onion engaged in protracted litigation in an effort to have the amendment assert control over our engagement contract. Ultimately, after more than two years of litigation, we were able to separate ourselves from the amendment, obtain judgement, and were awarded our claim. The Red Onion experience signaled the beginning of a trend by both purchasers and agents of refusing musicians' American Federation of Musicians contract forms and instead requiring musicians to execute engagement contracts which declare all performers independent contractors. The agents, many of whom began terminating their American Federation of Musicians booking agreements, informed entertainers that their "accounts" no longer wished to execute AFM contract forms. These agents then developed their own, self-serving contract forms[7] which invariably included the "independent contractor" designation for the performer. These contract forms were acceptable to the purchaser and were reluctantly executed by musicians who could either accept the terms and become employed or reject them and remain unemployed. We began to realize that even though the agent accepted commissions and other consideration from the musician, his primary concern was protecting the interests of his "account", the music purchaser, whose position and intent in contracting musicians is to undercut the musicians' ability to collectively bargain, and leave the musician with as little recourse as possible in the event of a dispute with the purchaser. Throughout the development of these agent-purchaser oriented contracts, the proliferation of the independent contractor requirement was also accompanied by a simultaneous abandonment of the purchaser's specific authority to control the manner, means, and details of the artists' performance. Note in Exhibit 104, paragraph 6, "The employer shall at all times have complete supervision, direction, and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means, and details of the performance of services by the musicians including the leader as well as the ends to be accomplished". With the introduction of "independent contractor", Kendall relinquished employer control of the musicians' services to the artist.[8]

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[5] Exhibits 107, 108, attatched and made a part hereof

[6] Exhibit 109, attatched and made a part hereof

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[7] Exhibit 110, 111, 112, 113, 114, 115, 116, attatched and made a part hereof
[8] Exhibit 110, paragraph 7, attatched and made a part hereof

IV.

PURCHASER MAINTENANCE OF EMPLOYER CONTROL

It must be clearly understood, however, that even though the Ken-Ran contract and the other agent-purchaser oriented contracts specifically establish the musicians as independent contractor, the reality of the relationship between the purchaser and musicians is that the purchaser exercises full authority and control over how the musicians perform. Typically, the purchaser controls what music the musician performs, the volume levels, the location of the instruments on the stage, the attire of the musicians on stage and during off-working hours at the performance site, rehearsal times, intermissions, substitute musicians, conduct of the musicians while engaged, repertoire being performed, other work performed for other purchasers during term of purchasers' contract, and future employment prospects. Thus, purchasers and agents require the musicians to acknowledge their status as independent-contractors as a condition of their employment, yet continue to practice stringent employer control. The musicians never have an opportunity to bargain; they must either accept or reject the terms of the music purchaser, who is and always has been the true employer.

V.

ACTIVITIES AS LABOR ORGANIZER

Throughout my performing career, I gained admiration and respect for the policy and procedure of the American Federation of Musicians. The Musicians Local in Los Angeles funded the litigation against the Red Onion which resulted in a favorable judgement and award. In 1981, Club Papagayo in Dallas refused to honor my American Federation of Musicians engagement contract. My claim was submitted for Federation arbitration and the resulting award on my behalf was paid in full by the purchaser. I therefore considered it an honor to become President-Secretary of Local 72, Fort Worth, Texas, where I am responsible for promoting the welfare and interests of our member musicians. Conscious of my duty to operate according to the United States laws respecting Labor-Relations, I have spent many hours studying procedural texts and surveys of labor law so that I may engage in employee organizing, representation elections, collective bargaining, the filing of unfair labor practices against employers, and other activities which are prescribed under the National Labor Relations Act.

VI.

MUSICIANS WITHOUT REMEDY

The continued insistence of music purchasers in requiring musicians to acknowledge themselves as independent contractors has left musicians without adequate remedy under Labor Law for unfair labor practices committed by these music purchasers, who nevertheless exercise strict employer control. In June, 1984, I filed unfair labor practice charges against Metro Hotels, Inc.,[9] who recently began rejecting American Federation of Musicians contract forms and instead requiring the musicians to execute contracts which exercise employer control, yet establishes the musicians as independent contractors.[10] The NLRB Regional Director refused to issue a complaint.[11] I filed a petition for representation and certification election on behalf of Local 72 member musicians who had been performing for Metro Hotels on a regular basis.[12] The Hotel responded by canceling the engagement of the musicians who organized and attempted to collectively bargain within the bounds of the Act.[13] I then withdrew the petition and filed another unfair labor practice charge, this one alleging the obviously discriminatory discharge of the musicians.[14] The NLRB Regional Board found no merit to the charge. All along, Metro Hotels asserted that the musicians were not employees but were independent contractors and not subject to protection of the Act. In another case, the musicians performing at Six Flags Over Texas were required to sign a contract which included the independent contractor designation[15] and set their pay at six dollars per hour, which is far below the hourly market rate of eleven to twenty dollars per hour for a steadily employed musician. All of the musicians authorized Local 72 to bargain with Six Flags concerning their employment; therefore, a bargaining demand was issued.[16] Six Flags refused to bargain and alluded to the musicians' status as independent contractors.[17]

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[9] Exhibit 117, attatched and made a part hereof
[10] Exhibit 116, attatched and made a part hereof
[11] Exhibit 118, attatched and made a part hereof
[12] Exhibit 119, attatched and made a part hereof
[13] Exhibits 120, 121, 122, 123, attatched and made a part hereof
[14] Exhibit 124, attatched and made a part hereof
[15] Exhibit 125, attatched and made a part hereof

VII.

RELIEF NEEDED

The inclination of the employer to unilaterally establish musicians' independent contractor status while retaining strict employer control has served to create confusion and a likelihood of confusion among musicians and their representatives, purchasers, and booking agents, as well as potential employers. These acts by employers and the attendant confusion have caused, and if not terminated, will continue to cause irreparable damage and injury to the lives of thousands of performing musicians and their families. The enactment of Senate Bill 281 and House Resolution 5107 would end misrepresentation of employer/employee relationships in the entertainment industry and provide relief under the National Labor Relations Act for musicians who choose to organize and bargain with their employer without fear of reprisal. In the interests of those musicians who are left without recourse against employers who take unfair advantage and openly refuse to bargain with authorized representatives of the performers own choosing, I respectfully urge the Labor Subcommittee to report this legislation favorably to the United States House of Representatives and work for immediate enactment into law. The lives and families of thousands of musicians deserve nothing less than your full and complete support on these issues.

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[16] Exhibit 126, attatched and made a part hereof
[17] Exhibit 127, attatched and made a part hereof

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, and if called as a witness, I can competently testify thereto.

Executed in Fort Worth, Texas on September 6, 1984.

Raymond M. Hair J.

Raymond Marshall Hair, Jr.

THE STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME, the undersigned authority, in and for Tarrant County, Texas, on this day personally appeared Raymond Marshall Hair Jr., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for purposes and consideration therein expressed, and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE

this 6th day of September, 1984.

My Commission Expires:

4-88

Helen De Luca

Notary Public in and for
Tarrant County, Texas

yazoo

Exhibit
#101

Representation: RAYMOND M. HAIR,JR. P.O. Box 2535 Denton, Texas 76201 817/383-2790

YAZOO

The basic ideas and concepts for the group we have today sprang from the heads of a group of students of the School of Music at NTSU. We were busy expressing ourselves freely in the jazz idiom here in Denton, but we found ourselves becoming disatisfied with the bow-tie, country club type of commercial gig which each of us had been accustomed to in other bands as sidemen for other bandleaders in the area.

We therefore decided to pool our talent, energy and scholarship to create the sort of commercial gig that we all enjoy doing, that we are proud of and at the same time is close to our hearts, souls, and roots. Good ole funky rhythm and blues. We know we have something here which is very special and unique. We really dig what we are doing and we hope we can share some of the excitement and intensity of our music with you.

YAZOO IS:

LARRY STEELMAN - keyboards, vocals. His compositions have been performed and recorded by the internationally famous 1pm lab band. Larry has played and recorded with Willis Allen Ramsey.

STEVE GIOVENCO - guitar, vocals. From New Jersey, Steve has appeared with Bruce Springsteen and the Four Seasons.

GILDA MEDINA - Lead vocalist. She was the heart & soul of Sweet Roll and brings to us the warmth and flair that she is known for throughout the southwest.

RAY HAIR - drums, vocals. Currently part-time faculty, NTSU. Ray has recorded for Buddah and Capitol Records.

JAY FORT - Woodwinds. Jay recently returned from a State Department tour of the Soviet Union as a member of the 1pm lab band - NTSU.

BOB PARR - Bass, vocals. From Sarasota, Fla. Bob has performed with Dave Mason and J.D. Loudermilk.

LEE KORNEGAY - Trumpet, flugelhorn, vocals. You've heard Lee on the gold and platinum records of Paul Simon, King Floyd & Jean Knight.

Exhibit
#102

YAZOO

Current Playlist--Winter, 1983

The tunes below constitute a partial listing of POPULAR DANCE MATERIAL now being played by YAZOO. This index is under constant revision, and does not include the vast amount of tunes that we are able to play upon request.

Jump to It--------------------------------Aretha Franklin
Do You Love Me----------------------------Patti Austin
Hard to Say I'm Sorry---------------------Chicago
Waiting for You to Decide-----------------Chicago
I. G. Y.----------------------------------Donald Fagin
Precious Love-----------------------------Al Jarreau
We're In This Love Together---------------Al Jarreau
Big Fun-----------------------------------Kool & the Gang
Get Down On It----------------------------Kool & the Gang
Celebration-------------------------------Kool & the Gang
I Can't Go for That-----------------------Hall and Oates
The Trouble With Hello--------------------Dave Grusin
You Can See How She Talks About You-------Melissa Manchester
Take It Away------------------------------Paul McCartney
Abracadabra-------------------------------Steve Miller
Heart Attack------------------------------Olivia Newton-John
Physical----------------------------------Olivia Newton-John
Let It Be Me------------------------------Willie Nelson
Always On My Mind-------------------------Willie Nelson
I Keep Forgetin'--------------------------Michael McDonald
American Music----------------------------Pointer Sisters
Breakout----------------------------------Patrice Rushen
All We Need-------------------------------Patrice Rushen
Forget Me Nots----------------------------Patrice Rushen
I Found Love------------------------------Patrice Rushen
Truly-------------------------------------Lionel Richie
Jigsaw------------------------------------Rufus
Bitch-------------------------------------Rolling Stones
Start Me Up-------------------------------Rolling Stones
Love Is in Control------------------------Donna Summer
Love will Turn You Around-----------------Kenny Rogers
Workin' For A Livin'----------------------Huey Lewis
Whatcha Doin------------------------------Seawind
Nasty Girls-------------------------------Vanity 6
That Girl---------------------------------Stevie Wonder
Do I Do-----------------------------------Stevie Wonder

Exhibit
#103

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

(HEREIN CALLED "FEDERATION")

CONTRACT

Local Number 147

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 26 day of July 1977, between the undersigned Purchaser of Music (herein called "Employer") and 6+1 (including leader) musicians.*

The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1. Name and Address of Place of Engagement AUstin College; Sid Richardson Center

Print Name of Band or Group YAZOO

2. Date(s), starting and finishing time of engagement 29 October, (9:00-1:00)

3. Type of Engagement (specify whether dance, stage show, banquet, etc.) Homecoming Dance

4. WAGE AGREED UPON $ $750.00 Seven Hundred Fifty Dollars (Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

5. Employer will make payments as follows: Check Payable to YAZOO delivered to leader during intermission (Specify when payments are to be made)

on request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall ke advance payment hereunder or shall post an appropriate bond.

the engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund; and the Employer and leader agree to be bound by the Trust Indenture dated October 2, 1959, as amended, relating to services rendered hereunder in the U. S., and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6. The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7. In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall, as agent of the Employer, enforce disciplinary measures for just cause, and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond their control. On behalf of the Employer the leader will distribute the amount received from the Employer to the musicians, including himself as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the Employer at or before the commencement of the employment hereunder and take and turn over to the Employer receipts therefor from each musician, including himself. The amount paid to the leader includes the cost of transportation, which will be reported by the leader to the Employer.

All employees covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to the Labor-Management Relations Act, 1947, all employees who are members of the Federation when their employment commences hereunder shall be continued in such employment only so long as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

To the extent permitted by applicable law, nothing in this contract shall ever be construed so as to interfere with any duty owing by any musician performing hereunder to the Federation pursuant to its Constitution, By-laws, Rules, Regulations and Orders.

(Continued on reverse side)

Austin College--Sandy Pittman
Print Employer's Name
X
RICHARDSON
PURCHASING OFFICER
Signature of Employer
Box H
Print Street Address
Sherman TX 75090
City State Zip Code
214-892-9101
Telephone

Raymond M. Hair, Jr. 72
Print Leader's Name Local No.
X Raymond M. Hair Jr.
Signature of Leader
1511 S. McCormick
Leader's Home Address
Denton TX 76201 817-383-2790
City State Zip Code
Booking Agent Agreement No.

*This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer levies under rulings of the U. S. Internal Revenue Service and of some state agencies.

FORM B-2B REV. 3-74

EXHIBIT
#104

A.F.M. EXCLUSIVE AGENT-MUSICIAN AGREEMENT

(Three Years or Less)

NOT FOR USE IN STATE OF CALIFORNIA

INFORMATION COPY

Name of Agent ____________________

Address of Agent ____________________

A.F.M. Booking Agent Number ____________________

Legal Name of Musician ____________________

Professional Name of Musician ____________________

Name of Musician's Orchestra or Group ____________________

Musician's A.F.M. Locals ____________________

This Agreement Begins on ____________________, 19____, and Ends on ____________________, 19____.

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1. Scope of Agreement

Musician hereby employs Agent and Agent hereby accepts employment as Musician's exclusive booking agent, manager and representative throughout the world with respect to musician's services, appearances and endeavors as a musician. As used in this agreement "Musician" refers to the undersigned musician and to musicians performing with any orchestra or group which Musician leads or conducts and whom Musician shall make subject to the terms of this agreement; "A.F.M." refers to the American Federation of Musicians of the United States and Canada.

2. Duties of Agent

(a) Agent agrees to use reasonable efforts in the performance of the following duties: assist Musician in obtaining, obtain offers of, and negotiate, engagements for Musician; advise, aid, counsel and guide Musician with respect to Musician's professional career; promote and publicize Musician's name and talents; carry on business correspondence in Musician's behalf relating to Musician's professional career; cooperate with duly constituted and authorized representatives of Musician in the performance of such duties.

(b) Agent will maintain office, staff and facilities reasonably adequate for the rendition of such services.

(c) Agent will not accept any engagements for Musician without Musician's prior approval which shall not be unreasonably withheld.

(d) Agent shall fully comply with all applicable laws, rules and regulations of governmental authorities and secure such licenses as may be required for the rendition of services hereunder.

3. Rights of Agent

(a) Agent may render similar services to others and may engage in other businesses and ventures, subject, however, to the limitations imposed by 8 below.

(b) Musician will promptly refer to Agent all communications, written or oral, received by or on behalf of Musician relating to the services and appearances by Musician.

(c) Without Agent's written consent, Musician will not engage any other person, firm or corporation to perform the services to be performed by Agent hereunder (except that Musician may employ a personal manager) nor will Musician perform or appear professionally or offer so to do except through Agent.

(d) Agent may publicize the fact that Agent is the exclusive booking agent and representative for Musician.

(e) Agent shall have the right to use or to permit others to use Musician's name and likeness in advertising or publicity relating to Musician's services and appearances but without cost or expense to Musician unless Musician shall otherwise specifically agree in writing.

(f) In the event of Musician's breach of this agreement, Agent's sole right and remedy for such breach shall be the receipt from Musician of the commissions specified in this agreement, but only if, as, and when, Musician receives moneys or other consideration on which such commissions are payable hereunder.

4. Compensation of Agent

(a) In consideration of the services to be rendered by Agent hereunder, Musician agrees to pay to Agent commissions equal to the percentages, set forth below, of the gross moneys received by Musician, directly or indirectly, for each engagement on which commissions are payable hereunder:

(i) Fifteen per cent (15%) if the duration of the engagement is two (2) or more consecutive days per week.

(ii) Twenty per cent (20%) for Single Miscellaneous Engagements of one (1) day duration — each for a different employer in a different location

(iii) In no event, however, shall the payment of any such commissions result in the retention by Musician for any engagement of net moneys or other consideration in an amount less than the applicable minimum scale of the A.F.M. or of any local thereof having jurisdiction over such engagement

(iv) In no event shall the payment of any such commissions result in the receipt by Agent for any engagement of commissions, fees or other consideration, directly, or indirectly, from any person or persons, including the Musician, which in aggregate exceed the commissions provided for in this agreement. Any commission, fee, or other consideration received by Agent from any source other than Musician, directly or indirectly, on account of, as a result of, or in connection with supplying the services of Musician shall be reported to Musician and the amount thereof shall be deducted from the commissions payable by the Musician hereunder.

(b) Commissions shall become due and payable to Agent immediately following the receipt thereof by Musician or by anyone else in Musician's behalf.

(c) No commissions shall be payable on any engagement if Musician is not paid for such engagement irrespective of the reasons for such non-payment to Musician, including but not limited to non-payment by reason of the fault of Musician. This shall not preclude the awarding of damages by the International Executive Board to a booking agent to compensate him for actual expenses incurred as the direct result of the cancellation of an engagement when such cancellation was the fault of the member.

(d) Agent's commissions shall be payable on all moneys or other considerations received by Musician pursuant to contracts for engagements negotiated or entered into during the term of this agreement; if specifically agreed to by Musician by initialing the margin hereof, to contracts for engagements in existence at the commencement of the term hereof (excluding, however, any engagements as to which Musician is under prior obligation to pay commissions to another agent); and to any modifications, extensions and renewals thereof or substitutions therefor regardless of when Musician shall receive such moneys or other considerations.

(e) As used in this paragraph and elsewhere in this agreement the term "gross earnings" shall mean the gross amounts received by Musician for each engagement less costs and expenses incurred in collecting amounts due for any engagement, including costs of arbitration, litigation and attorney's fees.

(f) If specifically agreed to by Musician by initialing the margin hereof, the following shall apply:

(i) Musician shall advance to Agent against Agent's final commissions an amount not exceeding the following percentages of the gross amounts received for each engagement 15% on engagements of three (3) days or less; 10% on all other engagements.

(ii) If Musician shall so request and shall simultaneously furnish Agent with the data relating to deductions, the Agent within 45 days following the end of each 12 months period during the term of this agreement and within 45 days following the termination of this Agreement, shall account to and furnish Musician with a detailed statement itemizing the gross amounts received for all engagements during the period to which such accounting relates, the moneys or other considerations upon which Agent's commissions are based, and the amount of Agent's commissions resulting from such computations. Upon request, a copy of such statement shall be furnished promptly to the Office of the President of the A.F.M.

(iii) Any balances owed by or to the parties shall be paid as follows: by the Agent at the time of rendering such statement; by the Musician within 30 days after receipt of such statement.

5. Duration and Termination of Agreement

(a) The term of this agreement shall be as stated in the opening heading hereof, subject to termination as provided in 5 (b), 6 and 10 below.

(b) In addition to termination pursuant to other provisions of this agreement, this agreement may be terminated by either party, by notice as provided below, if Musician

(i) is unemployed for four (4) consecutive weeks at any time during the term hereof; or

(ii) does not obtain employment for at least twenty (20) cumulative weeks of engagements to be performed during each of the first and second six (6) months periods during the term hereof; or

(iii) does not obtain employment for at least forty (40) cumulative weeks of engagements to be performed during each subsequent year of the term hereof.

(c) Notice of such termination shall be given by certified mail addressed to the addressee at his last known address and a copy thereof shall be sent to the A.F.M. Such termination shall be effective as of the date of mailing of such notice if and when approved by the A.F.M. Such notice shall be mailed no later than two (2) weeks following the occurrence of any event described in (i) above. two (2) weeks following a period in excess of thirteen (13) of the cumulative weeks of unemployment specified in (ii) above; and two (2) weeks following a period in excess of twenty-six (26) of the cumulative weeks of unemployment specified in (iii) above. Failure to give notice as aforesaid shall constitute a waiver of the right to terminate based upon the happening of such prior events.

(d) Musician's disability resulting in failure to perform engagements and Musician's unreasonable refusal to accept and perform engagements shall not by themselves either deprive Agent of its right to or give Musician the right to terminate (as provided in (b) above).

(e) As used in this agreement, a "week" shall commence on Sunday and terminate on Saturday. A "week of engagements" shall mean any one of the following:

(i) a week during which Musician is to perform on at least four (4) days; or

(ii) a week during which Musician's gross earnings equals or exceeds the lowest such gross earnings obtained by Musician for performances rendered during any one of the immediately preceding six (6) weeks; or

(iii) a week during which Musician is to perform engagements on commercial television or radio or in concert for compensation equal at least to three (3) times the minimum scales of the A.F.M. or of any local thereof having jurisdiction applicable to such engagements.

6. Agent's Maintenance of A.F.M. Booking Agent Agreement

Agent represents that Agent is presently a party to an A.F.M. Booking Agent Agreement which is in full force and effect. If such A.F.M. Booking Agent Agreement shall terminate, the rights of the parties hereunder shall be governed by the terms and conditions of said Booking Agent Agreement relating to the effect of termination of such agreements which are incorporated herein by reference.

7. No other Agreements

This is the only and the complete agreement between the parties relating to all or any part of the subject matter covered by this agreement.* There is no other agreement, arrangement or participation between the parties, nor do the parties stand in any relationship to each other which is not created by this agreement,* whereby the terms and conditions of this agreement are avoided or evaded, directly or indirectly, such as, by way of example but not limitation, contracts, arrangements, relationships or participations relating to publicity services, business management, personal management, music publishing, or instruction.

*(A.F.M. Personal Management Agreement Excepted.)

8. Incorporation of A.F.M. Constitution, By-laws, etc.

There are incorporated into and made part of this agreement, as though fully set forth herein, the present and future provisions of the Constitution, By-laws, Rules, Regulations and Resolutions of the A.F.M. and those of its locals which do not conflict therewith. The parties acknowledge their responsibility to be fully acquainted, now and for the duration of this agreement, with the contents thereof.

9. Submission and Determination of Disputes

Every claim, dispute, controversy or difference arising out of, dealing with, relating to, or affecting the interpretation or application of this agreement, or the violation or breach, or the threatened violation or breach thereof shall be submitted, heard and determined by the International Executive Board of the A.F.M., in accordance with the rules of such Board (regardless of the termination or purported termination of this agreement or of the Agent's A.F.M. Booking Agent Agreement), and such determination shall be conclusive, final and binding on the parties.

10. No Assignment of this Agreement

This agreement shall be personal to the parties and shall not be transferable or assignable by operation of law or otherwise without the prior consent of the Musician and of the A.F.M. The obligations imposed by this agreement shall be binding upon the parties. The Musician may terminate this agreement at any time within ninety (90) days after the transfer of a controlling interest in the Agent.

11. Negotiation for Renewal

Neither party shall enter into negotiations for or agree to the renewal or extension of this agreement prior to the beginning of the final year of the term hereof.

12. Approval by A.F.M.

This agreement shall not become effective unless, within thirty (30) days following its execution, an executed copy thereof is filed with and is thereafter approved in writing by the A.F.M.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the_____day of________________________,
19_____.

____
Agent

By ________________________________
Title or Capacity

____
Musician

____
Residence Address

____
City State Zip Code

Agent Representing No More Than Two Clients

If specifically agreed to by the parties by signing below:

(a) Agent warrants and represents that Agent presently serves, and Agent agrees that during the term hereof Agent will restrict its activities to serving, as booking agent, or manager, or representative, no more than one other musical soloist, orchestra, band or performing group. If such warranty and representation is untrue, this agreement is null and void. If such agreement is broken, this agreement shall automatically terminate.

(b) In consideration thereof, the parties agree that the provisions of 4([illegible]) (i) and (ii) and 4(f) above shall be inapplicable and that the compensation of Agent shall be as set forth in Schedule 1 attached. In no event, however, shall the payment of any commission result in the retention by Musician for any engagement of net moneys or other consideration in an amount less than the applicable minimum scale of the A.F.M. or of any local thereof.

____
Agent

By ________________________________
Title or Capacity

____
Musician

INTERNATIONAL PRINTING CO., INC.
Newark, N.J. 07102

INFORMATION COPY
INFORMATION COPY

EXHIBIT "E"

TERROGATORY NO. 13

Denton, Texas
*Doc Holidays 7/5, 7/6, 7/13-16; 9/6-10, 1977; 9/18-22, 1977; 12/6-10, 1977
*The Porch 6/27/77
*NTSU 8/25/77
TWU 2/14/82
Denton High School 12/16/77
*Bennies Jazz Club 5/3/81; 5/4/81; 5/8/82
*Zachary's Bar 5/28/81 - 6/1/81; 6/4&5/81; 6/23-27, 1981; 10/31/81

Fort Worth, Texas
Aquarium Club 9/2&3/77; 10/28/77; 11/11/77; 12/2, 12/3, 1977;
11/4, 11/5, 1977
Savvy's 3/28 - 4/2, 1978

Big Spring, Texas
Brass Nail 10/4-9, 1977; 10/13-16, 1977

Dallas, Texas
*Player's Lounge 8/17, 8/18, 8/19, 8/20, 1977
Place 9/22, 9/23, 9/24, 9/25, 9/27, 9/28, 1977
Airport Marina 11/14-19, 1977; 11/21-26, 1977
Oak Cliff Country Club 11/12/77
Holiday Inn Downtown 12/20/77
*The Trap II 8/26 & 8/27, 1977
*Central Forest Club 12/21-23, 1977
Temple Shalom 12/31/77
Marriott Currency Club 1/16 - 2/11, 1978
Dupont Plaza Hotel 5/5/78
Registry Hotel 5/13/78
Lancer's Club 8/31/79
Southwestern Medical School 2/9/80
Prestonwood Country Club 6/6/80
Hyatt Regency 10/25/80
Las Colinas Country Club 12/12/80
Doubletree Inn 12/13/80
Changes Club 4/16-19, 1981
Hilton Inn 2/27/81
Papagayo 6/9 & 10, 1981
Up Your Alley 6/12 & 13, 1981
Hyatt Regency 6/30/81 - 10/5/81
Loews Anatole 8/24/81
Hanging Gardens 10/17/81
Doubletree Inn 11/2/81 - 1/2/82
Loews Anatole 12/8/81
Loews Anatole 12/12/81
Plaza of the Americas 12/31/81
Don Miguels 1/4/82 - 1/30/82
Plaza of the Americas 3/17/82
Dallas Hilton 3/1 - 3/13/82
Playboy Club 4/5 - 5/1/82
Don Miguels 5/3 - 5/25/82
Doubletree Inn 6/28 - 8/28/82
35 Mandalay Hotel 10/12/82 - indefinite close

Coffeeville
Kansas

Colinas [illegible]

[illegible]

EXHIBIT
#106

EXHIBIT "E" - Page 2

Sherman, Texas
Austin College 10/29/77
Sherman High School 5/28/78

Paris, Texas
Paris Country Club 12/31/77

Austin, Texas
Eli's 4/11-16, 1978
Air Force Base 6/6/81

Waco, Texas
Funky's 11/15 & 16, 1979
Convention Center 4/26/80

Wichita Falls, Texas
Sheppard Air Force Base 6/2 & 3, 1980

Biloxi, Mississippi
Clementines 8/1-8/27, 1977

Lawton, Oklahoma
Fort Sill 7/29-31, 1977; 3/28/81

Fayetteville, Arkansas
Washington County Fairgrounds 5/26/78

Fort Smith, Arkansas
Municipal Auditorium 5/27/78

Eureka Springs, Arkansas
Inn of The Ozarks 12/6/80

Camden, Arkansas
*McKissack's Retreat 5/29 & 30, 1981

Lone Grove, Oklahoma (Ardmore)
Henry's Lady 4/19-29, 1978

Hutchinson, Kansas
Yesterdays 1/3-7, 1978

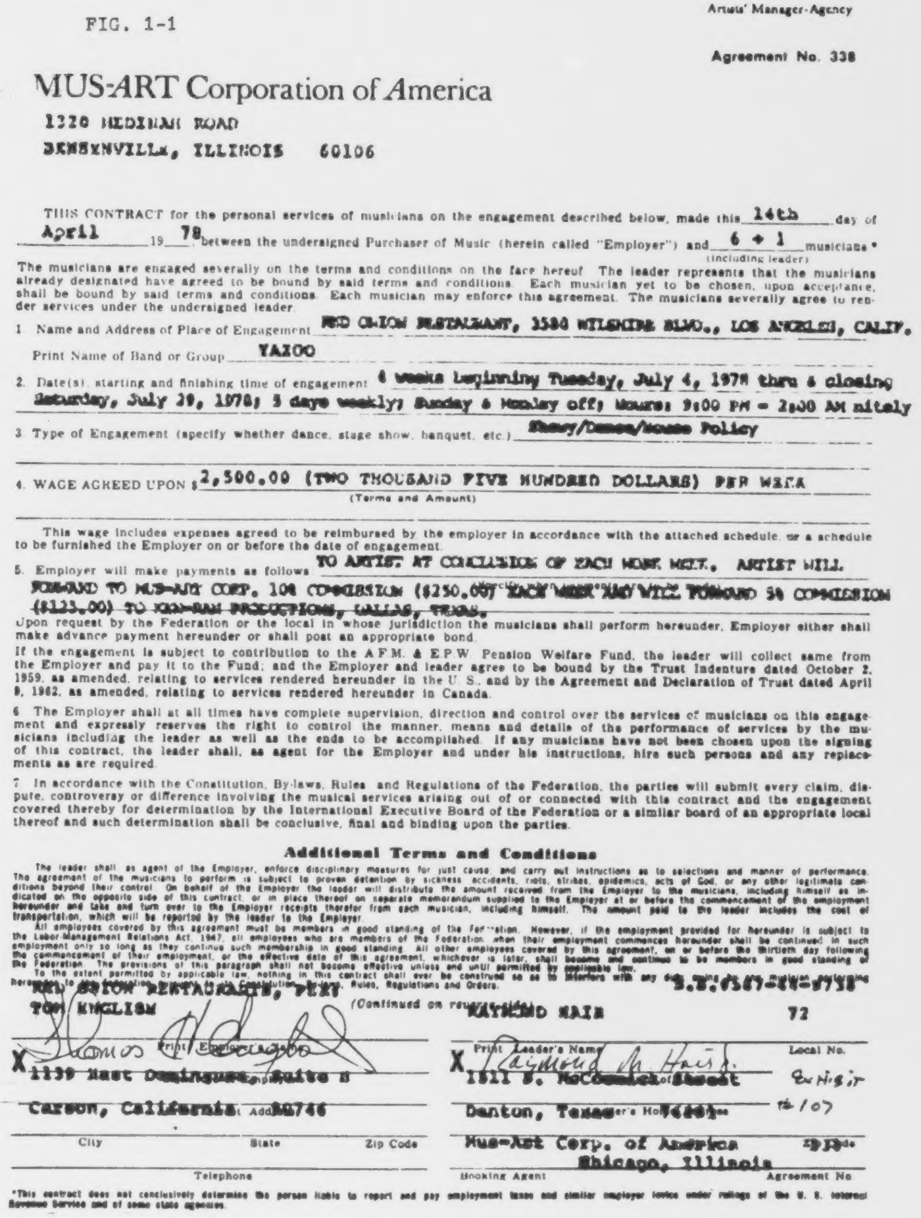
Joplin, Missouri
*Red Lion 5/8-12, 1978

Evansville, Indiana
Papillons 2/13 - 3/4, 1978
Papillons 5/29 - 6/24, 1978
*WNIN-TV 2/26/78
Vanderburgh Auditorium 6/25/78

Lafayette, Louisiana
Chicago Club 5/15 - 5/20, 1978

Los Angeles, California
Red Onion Wilshire 7/4 - 7/28, 1978

FIG. 1-1



Artists' Manager-Agency

Agreement No. 338

MUS-ART Corporation of America
1320 MEDINAH ROAD
BENSENVILLE, ILLINOIS 60106

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 14th day of April 19 78, between the undersigned Purchaser of Music (herein called "Employer") and 6 + 1 musicians* (including leader). The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1. Name and Address of Place of Engagement RED ONION RESTAURANT, 3580 WILSHIRE BLVD., LOS ANGELES, CALIF.

Print Name of Band or Group YAZOO

2. Date(s), starting and finishing time of engagement 4 weeks beginning Tuesday, July 4, 1978 thru & closing Saturday, July 29, 1978; 5 days weekly; Sunday & Monday off; Hours: 9:00 PM - 2:00 AM nitely

3. Type of Engagement (specify whether dance, stage show, banquet, etc.) Show/Dance/House Policy

4. WAGE AGREED UPON $2,500.00 (TWO THOUSAND FIVE HUNDRED DOLLARS) PER WEEK (Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

5. Employer will make payments as follows TO ARTIST AT CONCLUSION OF EACH WORK WEEK. ARTIST WILL FORWARD TO MUS-ART CORP. 10% COMMISSION ($250.00) EACH WEEK AND WILL FORWARD 5% COMMISSION ($125.00) TO KEN-RAM PRODUCTIONS, DALLAS, TEXAS.

Upon request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall make advance payment hereunder or shall post an appropriate bond.

If the engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund; and the Employer and leader agree to be bound by the Trust Indenture dated October 2, 1959, as amended, relating to services rendered hereunder in the U. S., and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6. The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7. In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall, as agent of the Employer, enforce disciplinary measures for just cause, and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond their control. On behalf of the Employer the leader will distribute the amount received from the Employer to the musicians, including himself as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the Employer at or before the commencement of the employment hereunder and take and turn over to the Employer receipts therefor from each musician, including himself. The amount paid to the leader includes the cost of transportation, which will be reported by the leader to the Employer.

All employees covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to the Labor-Management Relations Act, 1947, all employees who are members of the Federation when their employment commences hereunder shall be continued in such employment only so long as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

To the extent permitted by applicable law, nothing in this contract shall ever be construed so as to interfere with any duty owing by any musician performing hereunder to the Federation, pursuant to its Constitution, By-laws, Rules, Regulations and Orders.

(Continued on reverse side)

RED ONION RESTAURANTS, [illegible]
TOM ENGLISH
Print Employer's Name
X Thomas [illegible] English
1139 East Dominguez, Suite B
Employer's Address
Carson, California 90746
City State Zip Code
Telephone

S.S.#[illegible]
RAYMOND HAIR 72
Print Leader's Name Local No.
X Raymond M. Hair, Jr.
1511 N. McCormick Street [illegible]
Leader's Home Address
Denton, Texas 76201 [illegible]
Mus-Art Corp. of America [illegible]
Chicago, Illinois
Booking Agent Agreement No.

*This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer levies under rulings of the U. S. Internal Revenue Service and of some state agencies.

FIG. 1-2 **Additional Terms and Conditions (continued)**

Any musicians on this engagement are free to cease service hereunder by reason of any strike, ban, unfair list order or requirement of the Federation or of any Federation local approved by the Federation or by reason of any other labor dispute approved by the Federation, and shall be free to accept and engage in other employment of the same or similar character or otherwise, without any restraint, hindrance, penalty, obligation or liability whatever, any other provisions of this contract to the contrary notwithstanding.

Representatives of the Federation local in whose jurisdiction the musicians shall perform hereunder shall have access to the place of performance (except to private residences) for the purpose of conferring with the musicians.

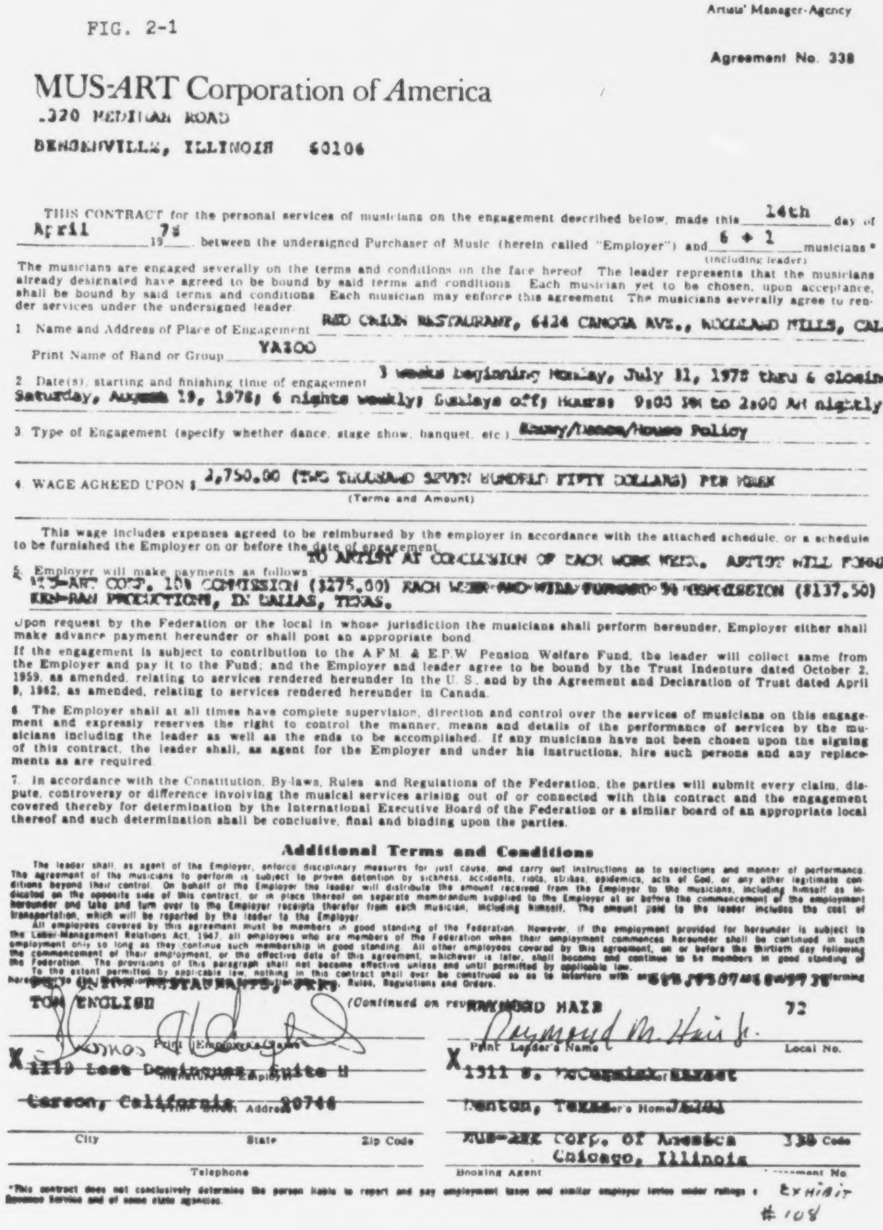
No performance on the engagement shall be recorded, reproduced or transmitted from the place of performance, in any manner or by any means whatsoever, in absence of a specific written agreement with the Federation relating to and permitting such recording, reproduction or transmission.

The Employer represents that there does not exist against him, in favor of any member of the Federation, any claim of any kind arising out of musical services rendered for such Employer. No musician will be required to perform any provisions of this contract or to render any services for said Employer as long as any such claim is unsatisfied or unpaid, in whole or in part. If the Employer breaches this agreement, he shall pay the musicians in addition to damages, 6% interest thereon plus a reasonable attorney's fee.

To the extent permitted by applicable law, all of the Constitution, By-laws, Rules and Regulations of the Federation and of any local thereof applicable to this engagement (not in conflict with those of the Federation) will be adhered to and the parties acknowledge that they are and each has the obligation to be, fully acquainted therewith.

Names of Musicians	A.F.M. Local and U.S. Social Security Numbers (if any)		Direct Pay; and Pension Fund Contributions (where applicable)	
Raymond Hair Leader	72	587-48-9738	$	$
Jim Lacefield	47			
Larry Steelman	72			
Steve Giovenco	72			
Sam Pedraza	72			
Danny Higgins	47			
Gilda Medina	Vocal			

FIG. 2-1



Artists' Manager-Agency

Agreement No. 338

MUS-ART Corporation of America
320 MERIDIAN ROAD
BENSENVILLE, ILLINOIS 60106

THIS CONTRACT for the personal services of musicians on the engagement described below, made this 14th day of April 1978, between the undersigned Purchaser of Music (herein called "Employer") and 6 + 1 (including leader) musicians.* The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. Each musician may enforce this agreement. The musicians severally agree to render services under the undersigned leader.

1. Name and Address of Place of Engagement RED ONION RESTAURANT, 6424 CANOGA AVE., WOODLAND HILLS, CALIF.

Print Name of Band or Group YAZOO

2. Date(s), starting and finishing time of engagement 3 weeks beginning Monday, July 31, 1978 thru & closing Saturday, August 19, 1978; 6 nights weekly; Sundays off; Hours: 9:00 PM to 2:00 AM nightly

3. Type of Engagement (specify whether dance, stage show, banquet, etc.) [illegible]/Dance/House Policy

4. WAGE AGREED UPON $ 2,750.00 (TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS) PER WEEK
(Terms and Amount)

This wage includes expenses agreed to be reimbursed by the employer in accordance with the attached schedule, or a schedule to be furnished the Employer on or before the date of engagement.

5. Employer will make payments as follows: TO ARTIST AT CONCLUSION OF EACH WORK WEEK. ARTIST WILL FORWARD MUS-ART CORP. 10% COMMISSION ($275.00) EACH WEEK AND WILL FORWARD 5% COMMISSION ($137.50) KEN-RAN PRODUCTIONS, IN DALLAS, TEXAS.

Upon request by the Federation or the local in whose jurisdiction the musicians shall perform hereunder, Employer either shall make advance payment hereunder or shall post an appropriate bond.

If the engagement is subject to contribution to the A.F.M. & E.P.W. Pension Welfare Fund, the leader will collect same from the Employer and pay it to the Fund; and the Employer and leader agree to be bound by the Trust Indenture dated October 2, 1959, as amended, relating to services rendered hereunder in the U.S., and by the Agreement and Declaration of Trust dated April 9, 1962, as amended, relating to services rendered hereunder in Canada.

6. The Employer shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon the signing of this contract, the leader shall, as agent for the Employer and under his instructions, hire such persons and any replacements as are required.

7. In accordance with the Constitution, By-laws, Rules and Regulations of the Federation, the parties will submit every claim, dispute, controversy or difference involving the musical services arising out of or connected with this contract and the engagement covered thereby for determination by the International Executive Board of the Federation or a similar board of an appropriate local thereof and such determination shall be conclusive, final and binding upon the parties.

Additional Terms and Conditions

The leader shall, as agent of the Employer, enforce disciplinary measures for just cause, and carry out instructions as to selections and manner of performance. The agreement of the musicians to perform is subject to proven detention by sickness, accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond their control. On behalf of the Employer the leader will distribute the amount received from the Employer to the musicians, including himself as indicated on the opposite side of this contract, or in place thereof on separate memorandum supplied to the Employer at or before the commencement of the employment hereunder and take and turn over to the Employer receipts therefor from each musician, including himself. The amount paid to the leader includes the cost of transportation, which will be reported by the leader to the Employer.

All employees covered by this agreement must be members in good standing of the Federation. However, if the employment provided for hereunder is subject to the Labor-Management Relations Act, 1947, all employees who are members of the Federation when their employment commences hereunder shall be continued in such employment only so long as they continue such membership in good standing. All other employees covered by this agreement, on or before the thirtieth day following the commencement of their employment, or the effective date of this agreement, whichever is later, shall become and continue to be members in good standing of the Federation. The provisions of this paragraph shall not become effective unless and until permitted by applicable law.

To the extent permitted by applicable law, nothing in this contract shall ever be construed so as to interfere with any [illegible] performing hereunder to [illegible] Constitution, By-laws, Rules, Regulations and Orders.

(Continued on rev

RED ONION RESTAURANTS, INC. [illegible]
TOM ENGLISH
Print Employer's Name

X
Signature of Employer

1110 East Dominguez, Suite H
Print Street Address

Carson, California 90746
City State Zip Code

Telephone

RAYMOND HAIR 72
Raymond M. Hair Jr.
Print Leader's Name Local No.

X 1311 W. McCormick Street
Signature of Leader

Denton, Texas 76201
Leader's Home Address

MUS-ART Corp. of America 338
Chicago, Illinois
Booking Agent Agreement No.

*This contract does not conclusively determine the person liable to report and pay employment taxes and similar employer levies under rulings of [illegible] Revenue Service and of some state agencies.

Exhibit
#108

FIG. 2-2 **Additional Terms and Conditions (continued)**

Any musicians on this engagement are free to cease service hereunder by reason of any strike ban unfair list order or requirement of the Federation or of any Federation local approved by the Federation or by reason of any other labor dispute approved by the Federation and shall be free to accept and engage in other employment of the same or similar character or otherwise without any restraint, hindrance, penalty, obligation or liability whatever any other provisions of this contract to the contrary notwithstanding.

Representatives of the Federation local in whose jurisdiction the musicians shall perform hereunder shall have access to the place of performance (except to private residences) for the purpose of conferring with the musicians.

No performance on the engagement shall be recorded, reproduced or transmitted from the place of performance, in any manner or by any means whatsoever, in absence of a specific written agreement with the Federation relating to and permitting such recording, reproduction or transmission.

The Employer represents that there does not exist against him, in favor of any member of the Federation, any claim of any kind arising out of musical services rendered for such Employer. No musician will be required to perform any provisions of this contract or to render any services for said Employer as long as any such claim is unsatisfied or unpaid, in whole or in part. If the Employer breaches this agreement, he shall pay the musicians in addition to damages, 6% interest thereon plus a reasonable attorney's fee.

To the extent permitted by applicable law, all of the Constitution, By-laws, Rules and Regulations of the Federation and of any local thereof applicable to this engagement (not in conflict with those of the Federation) will be adhered to and the parties acknowledge that they are and each has the obligation to be, fully acquainted therewith.

Names of Musicians	A.F.M. Local and U. S. Social Security Numbers (if any)		Direct Pay; and Pension Fund Contributions (where applicable)	
Raymond Hair	72	587-48-9738	$	$
Jim Lacefield Leader	47			
Larry Steelman	72			
Steve Giovenco	72			
Sam Pedraza	72			
Danny Higgins	47			
Gilda Medina	Vocal			

RECEIVED
..OV 1 9 1979
Ans'd............

WOODLAND HILLS
7/31 - 8/19/78 - 3 wks
@ 2750.00 wk

ID # 75-1535728

AMENDMENT AND SUPPLEMENT
TO
ENTERTAINMENT CONTRACT

It is the purpose of this Amendment and Supplement ("Amendment") to amend and supplement that agreement dated APRIL 28, 1978 (the "Agreement") between YAZOO (leadership of Ray Hair, Fed. I.D. # 75-1535728 ("Contractor") and Tom English, Entertainment Director, dba "The Red Onion" ("Red Onion") as follows:

1. The parties intend that Contractor, in performing the services specified in the Agreement, shall act as an independent contractor. The conduct, performance and control of the services to be performed by Contractor under the Agreement will be the sole responsibility of Contractor, and Contractor shall be the employer of the other musicians named in the Agreement (the "musicians"). Contractor will be responsible for the selection of musical numbers performed by the musicians. Contractor is not an employee of Red Onion and is not entitled to any benefits provided by Red Onion to its employees. Contractor shall perform and cause the musicians to perform the services specified in this Agreement in accordance with the standards applicable to their profession. Contractor shall be free to practice his profession for others during those periods when he is not performing services required under the Agreement.

2. Contractor shall indemnify Red Onion against all liability or loss, and against all claims or actions based upon or arising out of injury to, or death of persons, or damage to or loss of property, caused by the intentional or negligent acts of Contractor, his employees, or agents in connection with the performance of the services to be rendered under the Agreement.

3. Contractor shall, at his expense, carry adequate insurance to fully protect both Contractor and Red Onion from any and all claims of any nature for damage to property or for personal injury, including death, which may arise from the performance of the Contract.

4. Contractor shall be responsible for performing the work under the Agreement in a safe, skillful and professional manner, and shall be liable for his own negligence and the negligent acts of musicians. Excepting the time and place of the services to be performed hereunder, Red Onion shall have no right of control over the manner in which the services specified in this Agreement are to be performed, and shall therefore not be charged with the responsibility of preventing risk to Contractor or the musicians. All services performed under this agreement shall be done at Contractor's risk.

5. Contractor shall be liable for any personal injury or property damage resulting from the use, misuse, or failure of the musical instruments and related equipment furnished by Contractor or musicians in performing the services specified in the Agreement. The musical instruments and equipment shall be maintained by the Contractor and the musicians. Contractor shall be responsible for procuring and maintaining adequate insurance to cover loss or damage to the musical instruments and related equipment furnished by Contractor and musicians under the Agreement resulting from accident, malicious mischief, burglary, theft and fire.

6. The acceptance or use by Contractor or musicians of any equipment furnished, loaned, or rented to him or his employees by Red Onion shall be construed to mean that Contractor and his employees accept full responsibility for such equipment and agree to indemnify Red Onion against any and all loss, liability and claims for any injury or damages resulting from the use, misuse or mechanical failure of such equipment. Red Onion shall not be responsible or be held liable for any injury or damage to persons or property resulting from the use, misuse or mechanical failure of any musical instruments or rented equipment used by Contractor or any of the musicians, regardless of whether such injury or damage is to a musician or the property of Contractor, other contractors, Red Onion, or other persons.

EXHIBIT
#105

7. Red Onion shall have the right to terminate the Agreement and this Amendment in the event Contractor fails, in the reasonable opinion and judgement of Red Onion, to perform the services required under the Agreement or this Amendment. In the event a majority or more of the musicians named in the Agreement as members of the Band refuse to perform under the direction of Contractor or become parties to a dispute or disagreement with Contractor which in the judgement of Red Onion interferes with Contractor's performance of his duties hereunder, Red Onion may terminate the Agreement and this Amendment.

8. Contractor acknowledges his responsibility with respect to the musicians, to provide worker's compensation insurance, to pay social security and unemployment insurance taxes and to make appropriate federal and state contributions and deductions with respect to the wages contractor pays his employees, provided, however, Red Onion shall be responsible for contributions on behalf of Contractor and the musicians in accordance with Sections 680 and 681 of the California Unemployment Insurance Code. AFM and/or LPW Pension Welfare Fund contributions, if applicable, shall be included as part of the contract price for the services to be provided under the Agreement, and shall be remitted to the appropriate local by Contractor on behalf of himself and the musicians employed by Contractor.

9. No waiver, alteration or modification of any of the provisions of this agreement shall be binding unless in writing and signed by a duly authorized representative of each party.

10. In the event of any dispute, diagreement or question of interpretation of the terms and provisions of this Amendment or the Agreement, such dispute, disagreement or question of interpretation shall be determined by arbitration in accordance with the rules of the American Arbitration Association. The decision of the arbitrator in any arbitration proceeding to resolve any dispute, disagreement or question of interpretation of this Amendment or the Agreement shall be final and binding upon the parties.

11. To the extent any provision of this Amendment conflicts with any provision of the Agreement, this Amendment shall control.

"CONTRACTOR"	"RED ONION"
By: Ray Hair RAY HAIR	By: TOM ENGLISH
Dated: April 28, 1978	Dated April 28, 1978

P.O. Box 25505
Dallas, Texas 75225
(214) 349-3025

Ken-Ran

ENTERTAINMENT AGREEMENT

AGREEMENT made this ______ day of ______ 19 ______ between ______ (hereinafter called "Artist")

and ______ (hereinafter called "Purchaser")

IT IS MUTALLY AGREED BETWEEN THE PARTIES THAT:

1. NAME AND ADDRESS OF ENGAGEMENT ______
2. DATE OF ENGAGEMENT ______
3. TYPE OF ENGAGEMENT ______
4. HOURS ______ OFF ______
5. PRICE AGREED UPON ______
6. **PURCHASER** to make payments as follows ______
7. Artist shall at all times have complete supervision, direction and control over the services of its personnel on this engagement and expressly reserves the right to control the manner, means and details of the performance of services, as well as the ends to be accomplished.
8. It is understood that the Artist executes this agreement as an independent contractor and is not an employee of Purchaser. It shall be the responsibility of Artist to withhold and pay over to government authorities any and all income taxes and social security contributions which may be required to be withheld from the musician's fees.
9. It is understood and agreed that Purchaser will not be liable for any loss or damage to any equipment belonging to Artist while such equipment is on the premises of the Purchaser.
10. SPECIAL PROVISIONS

11. AGENT PROVISIONS

A. The undersigned agent is acknowledged to have fully performed upon the commencement of this engagement. He shall not be liable for the default of a Purchaser or the non performance of the group. No changes in the affecting commission shall be made without the written approval of agent.

B. The percentage of commission included in the gross price of this engagement is ______ Commission shall be held in trust by leader as fiduciary and forwarded to agent within **5** days of receipt, or 1) the agent has the authority to cancel the following engagement, or 2) at the request of agent, present purchaser is authorized to withhold from leader any commissions due **Ken Ran Enterprises** agency. Delinquent commission shall accrue interest at 1% per month, and if litigation is necessary for collection, attorneys fees shall be paid by debtor, unless prohibited by applicable local law.

C. If leader or key personnel of this musical group is rebooked into this or any establishment represented by the purchaser (including chain buyers of music) within **2 yrs** from the termination of this agreement, Purchaser and Leader shall be jointly and severally liable for payment to **Ken Ran Enterprises** Agency for commission in the rate set forth in this engagement.

12. UNION PROVISIONS

Members of unions or guilds, which may include the leader and members of this unit, agree to accept sole responsibility for complying with the rules and regulations of said unions or guilds of which they may be members. Agent does not represent that artist is affiliated with any musicians' union.

13. ARBITRATION OF CONTROVERSIES

Any controversies over the terms or conditions of this agreement will submitted to the office of the American Arbitration Association or Canadian equivalent in any state having jurisdiction, and decision accepted as binding on all parties concerned. If decision involves a monetary payment which is not paid in 30 days, collection or attorney fees shall be paid by debtor.

14. The recording, reproduction, or transmission of Artist's performance is prohibited absent written consent of Artist and his union.
15. We acknowledge and confirm that we have read and approve the terms and conditions set forth in this contract.

Purchaser's Name	Print Leader's Name
Signature of Purchaser	Signature of Leader
Print Street Address	Print Street Address
City State Zip	City State Zip
214 - 363 - ~~8300~~ 3800 Telephone	Booking Agent or Manager Telephone

COMMENCEMENT OF ENGAGEMENT TOGETHER WITH PHYSICAL DELIVERY OF THIS CONTRACT IS DEEMED TO BE AN ACCEPTANCE OF ALL TERMS BY THE PURCHASER

GROUP

CONTRACTS MUST BE RETURNED WITHIN 10 DAYS
OR THIS ENGAGEMENT WILL BE CONSIDERED CANCELLED

EXHIBIT
#110

International
Entertainment
Specialists

2308 Bluebonnet
Richardson, Texas 75081
(214) 238-9912

CONTRACT

THIS CONTRACT for the personal services of musicians on the engagement described below, made this ________ day of ________________, 19______ between the undersigned purchaser of music and ____________ musicians. The musicians are engaged severally on the terms and conditions on the face hereof. The leader represents that the musicians already designated have agreed to be bound by said terms and conditions. Each musician yet to be chosen, upon acceptance, shall be bound by said terms and conditions. The musicians severally agree to render services under the undersigned leader.

1. Name and address of Place of Engagement ____________________
2. Name of band ____________________
3. Date(s) of engagement ____________________
4. Hours of engagement ____________________
5. Type of engagement (specify whether dance, show, banquet, etc.) ____________________
6. WAGE AGREED UPON $ ____________________ (Terms and Amount)
7. Purchaser will make payments as follows: ____________________

____

____

8. The purchaser shall at all times have complete supervision, direction and control over the services of musicians on this engagement and expressly reserves the right to control the manner, means and details of the performance of services by the musicians including the leader as well as the ends to be accomplished. If any musicians have not been chosen upon signing of this contract, the leader shall, as agent for Purchaser and under his instructions, hire such persons and any replacement that are required. In the event that any member/performer for the Band or Group herein, as of the date of the execution of this contract, shall not be such a member on or before the date of engagement herein, the Purchaser reserves the right to approve or disapprove of any replacements for such member. Any such disapproval shall, at the Purchaser's option, terminate this Contract. The leader, manager or representative specifically agrees to so notify the Purchaser of any such changes of members as they arise. Failure of the Purchaser within seven days after notification to approve or disapprove shall constitute approval. The leader shall, as agent of the Purchaser, enforce disciplinary measures for just cause, and carry out instructions as to selections and manner of performance. On behalf of the Purchaser, the leader or agent will distribute the amount received from the Purcharer to the musicians, including himself as indicated in this Contract.

____________________ severally agrees and guarantees to pay ________ % of the above agreed wage for the duration of the engagement payable in like manner to the provisions of Section 7 above (____________________) for personal services, booking fee, contract fee, commission splits, and telephone rendered and incurred in this transaction to International Entertainment Specialists. The payment of the commission is to be made and tendered to International Entertainment Specialists, 2308 Bluebonnet, Richardson, Texas 75081. The person signing as leader, manager, or representative of band represents that he is under no minor disability and that he has legal capacity to contract and do business for the musicians.

____
Print Purchaser Name

____
Signature of Purchaser

____
Print Street Address

____
City State Zip Code

____
Telephone

____

____
Print Leader's Name

____
Signature of Leader

____
Leader's Home Address

____
City State Zip Code

____
Leaders Social Security Number

Other Members: ________ Exhibit ________
________ #111 ________

Additional Terms and Conditions

9. If the performer or key personnel of this musical group is rebooked into this, or any establishment owned or controlled by the purchaser (including chain buyers of entertainment) within 1 year from the finishing time of the engagement as shown above, purchaser and performer shall jointly and severally be liable for payment to the agent of a commission at the rate paid for this engagement.

Performer agrees to pay all costs and attorney fees incurred by agent due to performer's breach of the obligation to pay any commissions due to agent.

Purchaser, performer and agent agree to submit any claims or disputes arising from this contract to the jurisdiction of the circuit court of Collin County, Texas and further specifically agree that this contract shall be construed in accordance with the laws of the state of Texas.

The Group leader agrees to plan, assemble and furnish said group as constituted and shall supply and furnish all the necessary personnel as well as supply all musical arrangements and scripts, if any, subject to the terms and conditions herein provided. The Group leader shall perform and discharge all obligations imposed upon him by Workmen's Compensation, Unemployment Compensation or Insurance, Federal Insurance Contributions, withholding taxes, and other federal and state laws and regulations. He shall further file all returns and reports and make all withholding required by him as leader of aforementioned group, and he shall pay all assessments, taxes, contributions or other sums imposed thereunder upon or with respect to the salaries or wages paid by the Group leader to the persons whose services he engages or furnishes for the Purchaser.

Should the Purchaser be materially hampered, interrupted or interfered with in the normal conduct of its business or operating by reason of epidemic, fire, action of the elements, strikes, walkout, labor dispute, governmental disorder, court order, or other of any other legally constituted authority, act of God or public enemy, war, riot, civil commotion, or any other cause or causes beyond the Purchaser's control, whether of the same or of any other nature, or by lockout, it is understood and agreed that the Purchaser shall be relieved of its obligations hereunder with respect to any performances scheduled for presentation during the period or periods of such hampering, interruption or interference, and the Group leader shall have no claim of any kind or nature against the Purchaser relating to such obligations.

This Contract shall be Interpreted under the laws of the State of Texas, and this Contract constitutes the sole, complete and binding agreement between the musicians and the Purchaser.

At all time hereunder the term Purchaser shall include any and all principals who are represented by the party signing this contract as "Purchaser", including any subsequent principals the party signing this contract may represent. The term "principal" shall refer to all owners (whether corporations, pertnerships, individuals, or otherwise) of all places of engagement that subsequently employ the Band or Group herein.

It is agreed that failure to pay any commission that is due and payable to International Entertainment Specialists under any of the terms of this Contract by the leader, manager, representative of the musicians or the musicians themselves shall constitute a breach of this Contract with respect to I.E.S. which shall give rise to a cause of legal action for damages and expenses incurred resulting from such breach.

This contract sets forth the entire Contract between the parties hereto and merges all prior discussions and agreements between them and none of the parties shall be bound by any conditions, definitions, warranties or representations with respect to any terms or conditions other than those expressly in this Contract or as amended by subsequent agreements in writing, signed by a duly authorized officer or representative of the parties of this Contract.

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, this shall not affect any other provision of this Contract and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

The failure of either party to enforce any provision or condition of this Agreement at any time shall not be construed (1) as a waiver of that provision or condition or (2) as a forfeiture of any rights to future enforcement of that provision or condition.

This Agreement shall be binding upon and insure to the benefits of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

Ray Bloch PRODUCTIONS-DALLAS, INC.
6060 NORTH CENTRAL EXPWY • SUITE 441 • DALLAS, TEXAS 75206 • (214) 363-5611

October 6, 1981

Mr. Raymond Hair, Jr.
P.O. Box 2535
Denton, Texas 76201

Dear Ray:

In accordance with our conversation, you are to serve us with the following:

MUSIC: YAZOO

DATE: December 31, 1981
LOCATION: Plaza of the Americas Hotel
Dallas, Texas
ROOM: Grand Ballroom
HOURS: 9:00 p.m. - 1:00 a.m.
FEE: $1,700.00
REMARKS: Fee includes your own sound system. All requests for services of artist emanating from this engagement including requests from the audience (i.e. referrals) shall be referred solely to Ray Bloch Productions.

Please sign the enclosed copy and return it to our office in the envelope provided for your convenience. The original is for your own records.

IT IS AGREED THAT THE FEE PAID INCLUDES ALL EMPLOYER RESPONSIBILITIES, INCLUDING, BUT NOT LIMITED TO, FEDERAL, STATE, LOCAL TAXES, UNION FEES, WORKMEN'S COMPENSATION, ETC.

Sincerely,

James Harrell

In signing this contract, I agree that I am being engaged as an independent contractor. I am aware that RAY BLOCH PRODUCTIONS, INC. issues 1099's. For that purpose, I am inserting my Social Security Number.

AGREED TO AND ACCEPTED BY: ____________________

DATE: ____________ S.S.#: ____________

Encl.

Exhibit
#112

ATLANTA • CHICAGO • LOS ANGELES • MIAMI • NEW YORK • SAN FRANCISCO • WASHINGTON, DC

INC

PRODUCTIONS

ENTERTAINMENT ACT CONTRACT

This Contract, made this 5th. day of August, 19 81 between Ray Hair-- (hereinafter called "Entertainment Act"), and Entertainment productions.

For valuable consideration, Entertainment Act hereby agrees to perform services for Entertainment Productions under the following terms and conditions

1. Name and Address of Place of Engagement: Doubletree Inn - North Central Expressway - Dallas, Texas. moved to Anatole
2. Name of Entertainment Act: Yazoo.
3. Type of Engagement: Christmas Dance.
4. Date(s) Starting and Finishing Time of Engagement: December12, 1981 - 8:00 PM to 12:00 Midnight.
5. Consideration Payable to Entertainment Act: $ 800.00
6. Terms of Payment: Check will be given to you the night of the engagement.
7. Additional Terms and Conditions: Performing for Dallas Association of Petroleum Landmen.
8. Entertainment Act acknowledges that it will perform the services under this Contract as an independent contractor and that Entertainment Act will be responsible for withholding and paying to the Government any income, unemployment or social security taxes payable in connection herewith. Entertainment Act hereby agrees to indemnify and hold Entertainment Productions harmless against any and all liability which it may incur in connection with its failure to report and pay withholding, unemployment and social security taxes on behalf of the Entertainment Act.
9. The person signing this Contract on behalf of the Entertainment Act hereby represents that he has authority (a) to sign on behalf of Entertainment Act, and (b) to bind Entertainment Act to perform as required herein.
10. The additional terms located on the reverse side of this Contract are hereby incorporated by reference as if fully stated herein.

Ray Hair
Name of Entertainment Act

By: Ray Hair

P. O. Box 2535
Address

Denton, Texas 76201
City State Zip Code

Telephone Number: 817 / 383-2790

ENTERTAINMENT PRODUCTIONS, INC.

By: Rex Michael Sanders
Acting As President

2646 ANDJON • DALLAS, TEXAS 75220 • 214/350-4974

Exhibit
#113

Additional Terms and Conditions

11. **Governing Law.** This Contract is being executed and delivered and is intended to be performe the State of Texas and the substantive laws of the State of Texas shall govern the validity, constructi enforcement, and interpretation of this Contract.

12. **Entirety and Amendments.** This Contract embodies the entire agreement between the parties, supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing, executed by the party to be charged therewith.

13. **Parties Bound.** This Contract shall be binding on and inure to the benefit of Entertainment Act and Entertainment Productions and their respective successors, assigns, executors, administrators, heirs, and personal representatives.

14. **Invalid Provisions.** If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Contract.

15. **Equipment.** Entertainment Productions shall make arrangements with the Place of Engagement for staging, extra lighting, and sound equipment, etc.

16. **Inability to Perform.** The obligation of the Entertainment Act to perform is subject to failure to perform for reasons of sickness, accidents, riots, strikes, epidemics, Acts of God, or any other legitimate conditions beyond its control, provided that if Entertainment Act has more than one member and if a member is unable to perform, Entertainment Act shall use its best efforts to supply a substitute member acceptable to Entertainment Productions.

17. **Refund of Consideration.** Entertainment Act agrees to refund to Entertainment Productions a consideration paid under this Contract if Entertainment Act is unable or fails to perform as required herein for reasons other than the breach by the Client of the Contract between the Client and Entertainment Productions or the breach by Entertainment Productions of this Contract.

18. **Deferral of Payment of Consideration.** Notwithstanding Sections 5 and 6 hereof, Entertainment Act agrees that it shall not be entitled to demand payment of the consideration due to it under the terms of this Contract from Entertainment Productions until such time as Entertainment Productions shall receive such consideration from the Client. Should Entertainment Productions find it necessary to file suit against Client for consideration for the services of the Entertainment Act, Entertainment Act shall not be entitled to payment from Entertainment Productions until final determination of such suit against the Client in favor of Entertainment Productions. In the event that Entertainment Productions shall recover only a portion of the consideration due to Entertainment Productions under the contract between Client and Entertainment Productions, the amount payable to Entertainment Act under this Contract shall bear the same ratio to the consideration specified in Section 5 of this Contract as the amount paid by the Client bears to the total amount payable by Client under the terms of the Contract between Entertainment Productions and Client.

19. **Attorney's Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

AGREEMENT made this 10 th day of April 19 82.

between Raymond M. Hair Jr. d/b/a Yazoo (hereunder referred to as "ARTIST") and El Fenix Corporation (hereunder referred to as "PURCHASER").

Is is mutually agreed between the parties as follows:

The PURCHASER hereby engages the ARTIST and the ARTIST hereby agrees to perform the engagement hereinafter provided, upon all of the terms and condition herein set forth:

1. PLACE OF ENGAGEMENT Don Miguels Restaurant & Bar

Exact address 5280 Beltline Road, Addison Texas

2. DATE(s) OF ENGAGEMENT Monday, May 3, 1982 through Saturday, May 29, 1982

3. HOURS OF ENGAGEMENT Monday through Saturday, 9:30 pm. to 1:30 am.

5. FULL PRICE AGREED UPON $1850.00 per week (eighteen hundred and fifty dollars a week)

All payments shall be paid by certified check, money order, bank draft, cash or co-poration check as follows:

(a) $______ shall be paid by PURCHASER to and in the name of ARTIST'S agent. ______ NOT later than ______

(b) $ 1,850.00 shall be paid by PURCHASER to ARTIST not later than Monday (the following week)

6. SPECIAL PROVISIONS:
   1) The musicians shall play 45 minutes and take a 15 minute break.
   2) The group is made up of 5 musicians Monday through Thursday and 7 musicians Friday and Saturday.
   3) The management reserves the right to approve any musician substitutes.
   4) Don Miguel Restaurant & Bar is not responsible for musicians instruments.
   5) A prorated amount of money will be deducted from artists contract on any musician who does not play during scheduled time.
   6) Don Miguel Restaurant & Bar has the option to have all 7 musicians on a 6 day week for $2100.00 per week if they so desire.

(ARTIST)
By: Raymond M. Hair Jr.

(PURCHASER)
By:
Address:

All copies must be returned

to ______

by ______

EXHIBIT
#114

Contract:April 10, 1982

ADDENDUM TO EL FENIX CORPORATION AND Raymond M. Hair Jr. d/b/a Yasoo

"It is agreed and understood by and between the parties hereto that this Agreement is not subject to contributions to the A. F. M. & E. P. W. Pension Welfare Fund, or any other pension fund, and Raymond M. Hair Jr. warrants that Operator is in no way obligated to make any contributions either directly to such fund, or to anyone on behalf thereof."

"It is understood and agreed by and between the parties hereto that, at all times during the term hereof, Raymond M. Hair Jr. shall be, and act as, an Independent Contractor. Nothing herein shall be construed to constitute Raymond M. Hair Jr. as agents or employees of Operator, and neither Raymond M. Hair Jr. shall have any authority whatsoever to bind Operator in any manner whatsoever.

" Raymond M. Hair Jr. shall ensure that his/her employees, or other persons within or under his/her control, comport themselves in an orderly manner at all times when on Operator's premises. Intoxication or the use of obscene or lewd language, or gesture, within the sight or hearing of patrons of Operator's premises, by Leader or agent or employee of Leader, shall be cause for immediate and summary cancellation of this Agreement at the sole and absolute discretion of Operator, without recourse by Leader or his/her agents or employees."

"Operator shall have the right to request changes in the repertoire performed by Leader, and in the manner of performance. Leader agrees that, upon such request by Operator, he shall comply forthwith with such request by the Operator. It is further understood and agreed by and between the parties hereto that the permance of this Agreement by Leader is expressly made subject to proven detention by sickness, and that neither party shall have recourse against the other for nonperformance of this Agreement occasioned by accidents, riots, strikes, epidemics, acts of God, or any other legitimate conditions beyond the control of the parties hereto."

" Raymond M. Hair Jr. further agrees to comply with all applicable laws respecting employment, whether municipal, county, state or federal."

"To the extent permitted by applicable law, nothing in this Agreement shall ever be so construed as to interfere with any duty owing by any musician performing hereunder to the Federation pursuant to its Constitution, By-Laws, Regulations and Orders."

"Raymond M. Hair Jr. will take his/her normal breaks and management has the right to have Raymond M. Hair Jr. take additonal breaks whenever management feels it is neccessary."

ENGAGEMENT CONTRACT ENTERTAINMENT

This contract made this 28th day of June, 1983 between Metro Inns, Inc. as agent for Fort Worth Hilton (the "Owner") and Judy and Johnny Band (the "Artist").

1. NAME AND ADDRESS OF PLACE OF ENGAGEMENT: The Artist hereby agrees to perform as hereinafter specified at : Fort Worth Hilton Waterworks Lounge, 1701 Commerce St., Fort Worth, Texas 76102.

2. DATES AND TIMES OF PERFORMANCES. The Artist shall perform as hereinafter specified on the following dates and at the times specified on each such date: September 3, 1984 through December 1, 1984 - Monday thru Thursday 9:00 p.m. to 1:00 a.m. Friday and Saturday 9:00 p.m. to 1:30 a.m.

3. MEMBERS OF ARTIST: Each person, including the leader, comprising the Artist is as follows:

Such leader shall hire any required replacements and any required musicians that have not been hired at the date hereof.

4. TYPE OF PERFORMANCE. Artist shall provide the following personal services as entertainers (specify whether singer, band, dance, stage show, banquet, etc.): Dance Band

5. COMPENSATION. Owner shall pay Artist for services pursuant to this Agreement as follows (include time and amount of payment and room and food allowance if provided): $1,600 per week to be paid at end of performance on Saturday plus one sleeping room to be complimentary.

The leader shall distribute such cash amounts among the persons comprising the Artist as provided below and provide the Owner with receipts therefor from such persons.

Name	Amount

Exhibit
#115

6. REHEARSALS. The Artist agrees to attend rehearsals at reasonable times mutually agreeable to Artist and Owner.

7. PUNCTUALITY. The Artist agrees to appear punctually at the hour appointed for all rehearsals and performances.

8. NOT TO PERFORM ELSEWHERE. During the period of engagement in this Contract, the Artist shall not at any time perform at any place except as specified below without the prior written consent of Owner See Addendum

9. EQUIPMENT. Other than the existing sound system of the place specified in Paragraph 1 hereof, Owner shall not be obligated to supply anything to be utilized by the Artist in performing under this Contract. The Artist agrees that such existing sound system is adequate for performance under this Contract and any extra sound equipment or other equipment to be utilized in such performance will be obtained and paid for by the Artist.

10. CALAMITY. If it is impossible or impractical for the Artist to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the Artist shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted.

11. CANCELLATION. If Artist fails to perform or otherwise comply as provided herein, Owner may immediately terminate this contract without notice, and the Artist shall be entitled only to such proportionate part of the salary specified herein as the Artist shall actually have earned prior to such termination. In addition, Owner may cancel this Contract at any time by giving Artist 30 days prior written notice thereof. If mailed, such notice shall be deemed to have been given when deposited in the United States mail, postage prepaid, addressed to Artist at the address specified below.

12. CONTRACT. Artist warrants that its conduct while on the premises of Owner and its performance here under (i) shall in all respects comply with its representations made as an inducement to Owner's entering this contract and (ii) shall not violate any applicable federal, state, local or other governmental law, regulation, code or ordinance.

13. TAXES. The relationship of Artist (and each member thereof) to Owner shall be that of an independent contractor. Nothing herein shall be deemed to make Artist an employee of Owner for purposes of paying FICA, FUTA and federal and state unemployment and witholding taxes, the payment of which shall be the sole responsibility of Artist.

14. BINDING EFFECT. This Contract shall be binding on each member of Artist (whether now or hereafter a member thereof). The party executing this contract on behalf of Artist represents that each member of Artist has agreed to be bound hereby.

15. LIABILITY OF OWNER. The Owner shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of the Artist notwithstanding the fact that the Owner may designate an area on Owner's premises where such instruments and equipment may be stored or deposited. The Artist shall be solely responsible for such instruments and equipment and the safety thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as of the date first above written.

OWNER
BY
JOHN J. MC DONALD, GENERAL MANAGER
1701 Commerce St.
Street Address
Fort Worth, Texas 76102
City State Zip Code
817/335-7000
Telephone Number

ARTIST
BY
JOHNNY CARROLL
Rt. 1, Box 47
Street Address
Godley, Texas 76044
City State Zip Code
1-389-3290
Telephone Number

ADDENDUM

Notwithstanding the provisions of this Contract to the contrary, the parties hereto mutually agree as follows:

1. The "employees" (and musicians), as the term is used in the Contract, are independent contractors and shall be deemed and treated as such. Such employees shall be liable for payment of FICA, FUTA and federal and state unemployment, withholding and other employee taxes.

2. The Employer shall have no supervisoin and/or control over the performance of serivces by the musicians pursuant to this contract and the leader is not the agent of Employer.

3. The musicians warrant that their performance and their conduct while on the premises of Employer shall in all respects comply with the representations made as an inducement to the execution of this Contract and shall not violate any applicable federal or state law or regulation or municipal code, ordinance or regulation.

4. If the musicians fail to perform or otherwise comply as provided herein, Employer may immediately terminate this Contract without notice, and the mucisians shall be entitled only to such proportionate part of the compensation specified herein as the mucisians shall actually have earned prior to such termination. In addition, Employer may cancel this Contract at any time by giving the musicians 3 days prior written notice thereof.

5. The Employer shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of musicians engaged by Employer pursuant to the Contract, notwithstanding the fact that Employer may designate an area on the premises where such instruments and equipment may be stored or deposited. The musicians shall be solely responsible for such instruments and equipment and the safety thereof.

6. The musician agrees to attend rehearsals at reasonable times mutually agreeable to musician and employer.

7. The musician hereby agrees to appear punctually at the hour appointed for all rehersals and performances.

8. During the period of engagement specified in this Contract, the musician shall not at any time perform at any place except as specified below without the prior written consent of Owner ______________________________

____.

9. If it is impossible or impractical for the musician to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the musician shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted.

10. This Contract shall be binding on each member of Artist (whether now or hereafter a member thereof). The party executing this Contract on behalf of Artist represents that each member of Artist has agreed to be bound hereby.

OWNER

By____________________

ARTIST

By____________________

11. The parties agree that on special occasions that the Artists (Judy & Johnny) will be requested to play special events and with a minimum (2) week notice will inform Management and, in addition, will provide acceptable replacements and arrange for payment direct.

METRO HOTELS, INC.

METRO ENTERTAINMENT SERVICE
6060 North Central Expressway, Suite 122
Dallas, Texas 75206
(214) 369-9943

THIS AGREEMENT is made this _____ day of ______________ 198 __ between ______________________________
hereinafter referred to as ARTIST(S) and ____ hereinafter
referred to as PURCHASER, who is located at ____

IT IS MUTUALLY AGREED AS FOLLOWS:

1 ARTIST(S) will furnish and PURCHASER will accept for the period of the engagement hereinafter described, the following services ____
______________________________ at the ______________ Hotel
commencing (Day) ______________ 198 __ ending (Day) ______________ 198 __

2 During the period of engagement ARTIST(S) group shall consist of not less than ________ members, as follows (Names)

3 PURCHASER reserves the right to cancel this engagement if there are any changes in above personnel that are not previously approved in writing

4 In consideration for the above services to be performed during the term of the Agreement PURCHASER shall pay ARTIST(S) as follows

5 There will be absolutely no advances or draws against payments

6 Remarks

7 It is understood and agreed that ARTIST(S) shall perform as an independent contractor and not as an employee or agent of the PURCHASER and, as such, ARTIST(S) shall have the sole and exclusive control over the means, method and details of fulfilling ARTIST(S) obligations hereunder, except for the performance times which, it is agreed, are within the sole discretion of the PURCHASER

8 ARTIST(S) agrees to perform and discharge all obligations hereunder as an independent contractor under any and all laws, whether existing or enacted in the future, in any pertaining to the engagement under this Agreement including, but not limited to Social Security laws, Workman's Compensation insurance, income taxes, State Employment insurance taxes or contributions, and public liability insurance. It is further agreed that the ARTIST(S) will indemnify and hold PURCHASER harmless from and against any and all claims, losses, cost (including attorney's fees) and losses whatsoever arising in any way out of ARTIST(S) performance under this Agreement

9 Commencement of engagement together with physical delivery of this contract to ARTIST(S) or his representative shall be deemed an acceptance of all terms listed above, by the PURCHASER of the entertainment

White [illegible] • [illegible] Artist • Yellow MESI • Pink Agent • [illegible]

Exhibit
#116

3 84 500

850 109

Page 2 of 2

METRO HOTELS, INC.

10. This Agreement shall be governed by the laws of the State of and any and all disputes arising hereunder shall be settled by the courts of said State In the event that ARTIST(S) breach any of the covenants contained in this Contract and Purchaser is forced to obtain legal or injunctive relief ARTIST(S) shall be liable for all of PURCHASER'S costs, including without limitation, reasonable attorney's fees, incurred in obtaining and enforcing said relief

11. ARTIST(S) agrees to set up no later than 2 00 p m on opening day of performance Any exception to this will be covered by a phone call to the general manager and/or food and beverage director, only

12. ARTIST(S) must provide their own quality sound system unless otherwise instructed Speakers must be on stage whenever possible Leader assumes full liability for any injury to patrons due to equipment placed on dance floor or surrounding areas

13. All volume levels shall be established no later than the conclusion of the first evening's performance between the leader and the lounge manager PURCHASER reserves the right to cancel this engagement and all future engagements at the end of any evening when established levels are infracted by ARTIST(S)

14. Group members shall be suitably attired both on stage and during off-working hours in the Hotel and shall at all times conduct themselves in a responsible, courteous and professional manner

15. Drinking or smoking on stage shall be strictly prohibited

16. ARTIST(S) who are members of unions or guilds, which may include the leader and/or member of this unit, agree to accept sole responsibility for complying with the rules and regulations of said union or guild of which they may be members

17. The ARTIST(S) are independent contractors and shall be deemed and treated as such Such employees shall be liable for payment of FICA, FUTA and federal and state unemployment, withholding and other employee taxes

18. The ARTIST(S) warrant that their performance and their conduct while on the premises of PURCHASER shall in all respects comply with the representations made as an inducement to the execution of this Contract and shall not violate any applicable federal or state law or regulation or municipal code, ordinance or regulation

19. ARTIST(S) agrees during the term of this Contract not to accept directly or indirectly, without the prior written consent of PURCHASER any employment with, or render services to, any competitor of PURCHASER, or take any action inconsistent with the terms of this Contract

20. If the ARTIST(S) fail to perform or otherwise comply as provided herein, PURCHASER may immediately terminate this Contract without notice, and the ARTIST(S) shall be entitled only to such proportionate part of the compensation specified herein as the ARTIST(S) shall actually have earned prior to such termination **In addition, PURCHASER may cancel this Contract at any time by giving the ARTIST(S) three days prior written notice thereof**

21. The PURCHASER shall have no liability with respect to the theft, damage or other loss of the instruments or equipment of ARTIST(S) engaged by PURCHASER pursuant to the Contract, not withstanding the fact that PURCHASER may designate an area on the premises where such instruments and equipment may be stored or deposited The ARTIST(S) shall be solely responsible for such instruments and equipment and the safety thereof

22. The ARTIST(S) agrees to attend rehearsals at reasonable times mutually agreeable to ARTIST(S) and PURCHASER

23. The ARTIST(S) hereby agrees to appear punctually at the hour appointed for all rehearsals and performances

White Purchaser • Green Artist • Yellow [illegible] • Pink Agent • Gold Ent Service

3/84/500

FORM ALL20-850-10F

METRO HOTELS, INC.

24. During the period of engagement specified in this Contract, the ARTIST(S) shall not at any time perform at any place except as specified below without the prior written consent of the PURCHASER.

25. If it is impossible or impractical for the ARTIST(S) to give a performance at any of the times specified herein because of sickness, accident, calamity, fire or any other similar cause, the ARTIST(S) shall not be entitled to receive any compensation for any performance so prevented, and a proportionate part of the compensation provided for in this Contract shall be deducted.

26. This Contract and the rights and obligations arising hereunder are personal to ARTIST(S) and PURCHASER and may not in any way be assigned by ARTIST(S).

27. This Contract contains all of the agreements and conditions made between the parties hereto with respect to the subject matter hereof and may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective legal representatives.

28. This Contract shall be binding on each member of the ARTIST(S) (whether now or hereafter a member thereof.) The party executing this contract on behalf of ARTIST(S) represents that each member of ARTIST(S) has agreed to be bound hereby.

29. The ARTIST(S) must furnish a Certificate of Insurance showing proof of automobile liability insurance, public liability insurance and worker's compensation insurance. The liability insurance must have minimum limits of 100,000/300,000 bodily injury and 50,000 property damage and the worker's compensation coverage should be in limits as required by the State Statute and $100,000. Employer's liability. The Certificate of Insurance should provide the hotel with ten (10) days notice of change or cancellation. The Certificate must be received by the hotel prior to any rehearsals or performances.

30. A 15% fee shall be deducted from the face of contract by PURCHASER and paid directly to Metro Entertainment Services. Said deduction is authorized by ARTIST(S) to be withheld by PURCHASER on a weekly basis to be forwarded weekly to Metro Entertainment Services.

AGREED TO AND ACCEPTED:

PURCHASER'S NAME	LEADER'S NAME (Printed)
Authorized Signature	Leader's Signature
Address	Address
City State Zip	City State Zip
Telephone	Telephone
Booking Agent Telephone	SS # or Fed ID #

CONTRACTS MUST BE SIGNED BY ARTIST(S) OR HIS AUTHORIZED REPRESENTATIVE AND RETURNED WITHIN ____ DAYS OF POSTMARK OR THIS ENGAGEMENT COULD BE CONSIDERED NULL AND VOID.

White [illegible] • Green Artist • Yellow ME [illegible] • Pink Agent • Gold Ent. Service

3/84/500

FORM ALL20 850 10F

FORM NLRB-501
(2-81)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE
CASE NO. 16-CA-11694
DATE FILED 6/15/84

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. NAME OF EMPLOYER: Metro Hotels, Inc.
b. NUMBER OF WORKERS EMPLOYED: 1800
c. ADDRESS OF ESTABLISHMENT *(street and number, city, State, and ZIP code)*: Suite 860 75206 6060 North Central Expressway Dallas, TX
d. EMPLOYER REPRESENTATIVE TO CONTACT: John Manderfeld
e. PHONE NO. 214-363-9997
f. TYPE OF ESTABLISHMENT *(factory, mine, wholesaler, etc.)*: Hotel
g. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Service

h. THE ABOVE-NAMED EMPLOYER HAS ENGAGED IN AND IS ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(a), SUBSECTIONS (1) AND (2) & (5) *(list subsections)* OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE *(be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

On or about April 30, 1984, it, by its officers agents and representatives, dominated and contributed financial support to a labor organization known as Metro Entertainment Services, and at all times since said date has dominated and contributed financial support to Metro Enterainment Services.

Since On or about August 8, 1983 and al all times thereafter, it by its officers, agents, and representatives has refused to bargain collectively with Fort Worth Professional Musicians Association, Local 72 AFM, a labor organization chosen by a majority of its employees in an appropriate unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other terms and conditions of employment by refusing to meet and negoitate a collective bargaining agreement.

BY THE ABOVE AND OTHER ACTS, THE ABOVE-NAMED EMPLOYER HAS INTERFERED WITH, RESTRAINED, AND COERCED EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT.

3. FULL NAME OF PARTY FILING CHARGE *(if labor organization, give full name, including local name and number)*: Ray Hair, Fort Worth Professional Musicans Association Local 72AFM

4a. ADDRESS *(street and number, city, State, and ZIP code)*: 3458 Blue Bonnet Circle Fort Worth, Texas 76109
4b. TELEPHONE NO. 817-927-8478

5. FULL NAME OF NATIONAL OR INTERNATIONAL LABOR ORGANIZATION OF WHICH IT IS AN AFFILIATE OR CONSTITUENT UNIT *(to be filled in when charge is filed by a labor organization)*: American Federation of Musicans

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By ____ ~~President-Secretary~~
(signature of representative or person filing charge) (title, if any)
Ray Hair

Address 3458 Blue Bonnet Circle Ft.Worth,TX 76109 817-927-8478 6/15/84
(telephone number) (date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IM
(U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT
117

Metro Hotels, Inc.
Case No. 16-CA-11694

July 11, 1984

ATTACHMENT "A"

The investigation failed to establish that Metro Hotels, Inc., had coerced or restrained its employees in the exercise of their Section 7 rights, dominated and/or contributed financial support to a labor organization known as Metro Entertainment Services, or refused to meet and negotiate a collective bargaining agreement. Rather, the investigation established that Local 72AFM is not the recognized or certified bargaining agent for any employees of Metro Hotels and is not a party to any collective bargaining agreement with that corporation. Further, no demand to bargain was made until the day this charge was filed. There was no evidence presented or adduced to support the allegations that any Metro Hotel employee has been coerced or restrained within the meaning of the Act. Further, the evidence does not support the contention that Metro Entertainment Services exists in whole, or in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, or rates of pay. Rather, the evidence reflects that Metro Entertainment Services was created for the express purpose of securing entertainment services for Metro Hotels, Inc. Since Metro Entertainment Services is not a labor organization within the meaning of Section 2(5) of the Act, there can be no violation of Section 8(a)(2). Therefore, I am refusing to issue complaint in this matter.

EXHIBIT
118

Form NLRB-502
(11-83)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FORM EXEMPT UNDER
44 U.S.C. 3512

PETITION

DO NOT WRITE IN THIS SPACE

CASE NO. 16-RC-8705

DATE FILED 7/10/84

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)

(Check one)

☒ RC-CERTIFICATION OF REPRESENTATIVE — A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☐ RD-DECERTIFICATION — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees. (Check one) ☐ In unit not previously certified
☐ In unit previously certified in Case No. ____________

☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. ____________

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: Metro Hotels, Inc.

EMPLOYER REPRESENTATIVE TO CONTACT: John Manderfeld

PHONE NO. (214) 363-9997

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, State and ZIP Code): 6060 N. central Expressway, Suite 860 Dallas, TX 75206

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.): Hotel.

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Service

5. Unit Involved (In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)

Included: All Musicians employed by the employer at its 1701 Commerce Fort Worth, Texas hotel.

Excluded: All other employees including supervisors as defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT 4
PROPOSED (BY UC/AC) ____________

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?*
☒ Yes ☐ No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on July 2, 1984 (Month, day, year) and Employer declined recognition on or about no response received (Month, day, year) (If no reply received, so state)

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent (If there is none, so state)

NAME: None

AFFILIATION:

ADDRESS:

DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY (Show month, day, and year)

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP (Month, day, and year)

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES .... NO X

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF .... (Insert name), A LABOR ORGANIZATION, OF .... (Insert address) SINCE .... (Month, day, year)

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Fort Worth Professional Musicians Association Local 72, AFM
(Petitioner and affiliation, if any)

By Raymond M. Hair
(Signature of representative or person filing petition)
Ray Hair

President-Secretary
(Title, if any)

Address 3485 Blue Bonnet Circle Fort, Worth, TX 76109
(Street and number, city, State, and ZIP Code)

(817)927-8478
(Telephone number)

EXHIBIT
119

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, Johnny Carroll, Rt. 1-Box 47, Godley, Texas 76044, employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

6/15/84
date

Johnny Carroll
signature

Exhibit
#120

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, Judy Lindsey, 1700 Parkridge Terrace, Arlington, Texas 76012, emlpoyee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72 to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

date

signature

EXHIBIT
#121

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, Mark Anthony (RIEDERER), 2303 Monte Carlo #B, Arlington, Texas 76015, employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

6-14-74
date

signature

ExHiBiT
#122

AMERICAN FEDERATION OF MUSICIANS, LOCAL 72

I, John Hogan, ______________________________,

employee of METRO INNS, INC., Fort Worth, Texas, employed as a musician, hereby authorize the American Federation of Musicians and the Fort Worth Musicians Union, AFM Local #72, to represent me for the purpose of collective bargaining, respecting rates of pay wages, hours of employment, or other conditions of employment, in accordance with applicable law.

6/15/84
date

John Hogan
signature

EXHIBIT
#123

FORM EXEMPT UNDER 44 U.S.C. 3512

FORM NLRB-501
(2-83)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
16-CA-11778	8/3/84

INSTRUCTIONS File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring

1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a Name of Employer METRO HOTELS, INC. and Metro Hotels Entertainment Services, Inc. (Joint Employers)

b Number of workers employed 4

c Address *(street, city, state, ZIP code)* 6060 N. Central Expwy., Suite 860
Dallas, Texas 75206

d Employer Representative John Manderfeld

e Telephone No (214) 363-9997

f Type of Establishment *(factory, mine, wholesaler, etc.)* Hotel

g Identify principal product or service Hotel service

h The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* 3. of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act

2 Basis of the Charge *(be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

On or about August 2, 1984, the above named employers discriminated against their employees (members of The Judy-John Band) as a result of their activities on behalf of the below named labor organization and to discourage membership therein.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act

3 Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Fort Worth Professional Musicians Association, Local 72, AFM

4a Address *(street and number, city, state, and ZIP code)* 3458 Bluebonnet Circle, Ft. Worth, Texas 76109

4b Telephone No 927-8478

5 Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
American Federation of Musicians

6 DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

HICKS, GILLESPIE, JAMES & LESSER

By ______ *(signature of representative or person making charge)* Attorney *(title if any)*

Address 1341 W. Mockingbird Lane, Suite 704E
P. O. Box 47222
Dallas, Texas 75247

(214) 630-8621 *(Telephone No.)*

8/3/84 *(date)*

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

EXHIBIT
#124

LETTER OF AGREEMENT

DIXIELAND BAND and SIX FLAGS OVER TEXAS

1984

This document will serve as a Letter of Agreement between Texas Flags LTD., a limited partnership of which Six Flags Over Texas, Inc. is general Partner, herein referred to as "FLAGS", manager and operator of Six Flags Over Texas, and ALLAN MORISSEY AND THE DIXIELAND BAND, a group of musicians, herein referred to as "ALLAN MORISSEY".

1. Allan Morissey shall produce, present, and perform a roving dixieland band show at Flags during the 1984 season beginning May 6, 1984 with the last day being September 3, 1984.
2. Allan Morissey shall provide necessary equipment to perform the roving dixieland band show.
3. Allan Morissey shall perform from 9:30 a.m. to 5:30 p.m. each day. Performances will be at times and locations specified by Flags. There will be no performance on one day per week to be designated by Flags. The duration of each performance of the show shall be between thirty (30) and forty-five (45) minutes in length.
4. Flags shall pay to Allan Morissey an hourly rate of $6.00 per member of the five (5) member band. In the event there is less than five members per show Six Flags shall pay $6.00 per hour less per band member missing. Band members will be paid for eight (8) hours daily less forty-five (45) minutes for lunch break. The first check will be made available Friday, May 11, 1984. Allan Morissey shall bear all payroll costs.

EXHIBIT
#125

5. Flags shall have the option, at its sole discretion, to cancel this Letter of Agreement with (2) weeks written notice by showing good cause therefor, during the 1984 operating season.
6. Allan Morissey shall hold Flags harmless of and from any claims asserted by an employee of Allan Morissey and from any claims asserted by third parties by reason of any contract, act of omission by Allan Morissey, its agents, employees or others for whom it is resposible. Further, it is expressly understood and agreed that Allan Morissey agrees to indemnify and hold Flags harmless for the consequences of the negligent conduct of Flags and the non-negligent conduct of Allan Morissey.
7. Allan Morissey shall, at his own expense, obtain all necessary licenses, permits, certificates or other authorizations required in connection with the production of the dixieland band show, including a Certificate of Insurance of Worker's Compensation with statutory limits.
8. Allan Morissey agrees not to use the names "Six Flags" or "Six Flags over Texas" or any deriviation thereof without the prior written consent of Flags.
9. Allan Morissey shall dress in wardrobe provided by Flags at Flags' expense.

10. Allan Morissey's personnel shall be governed by the same rules of personal conduct, dress and grooming as are Flags' personnel and Allan Morissey shall, upon written request of Flags, discontinue the use of any of its employees in connection with the Show's production of performance upon showing good cause therefor.

11. Allan Morissey shall provide at Allan Morissey's expense suitable substitutes for absent band members. Substitutes shall be governed by the same rules of personal conduct, dress and grooming as are Flags personnel. Flags shall have the right to reject any substitute provided by Allan Morissey upon showing good cause therefor.

12. The show material shall be in keeping with the desired image of Flags; such material to be reviewed and approved by Flags prior to commencement of show production. Allan Morissey agrees the form, content and performance of the show shall be in good taste and shall never contain any profane, obscene, or objectionable material. Flags shall have the right to raise reasonable objection as to compatibility with the image and reputation of the park as a family-oriented amusement center, and Alan Morissey shall upon notice by Flags delete any material which Flags considered objectionable, profane or obscene.

Flags shall at all times have the right of final approval as to form and content of all shows performed by Allan Morissey.

IN WITNESS WHEREOF, the parties hereto have duly executed and affixed their hands on the day and year hereon written.

"Allan Morissey"

DIXIELAND BAND

By:
Allan Morissey

"Flags"

TEXAS FLAGS LTD.
BY: SIX FLAGS OVER TEXAS, INC.
General Partner

By: Robert D Bennett
Bob Bennett
Vice President & General
Manager

LOCAL 72

FORT ORTH PROFESSIONAL MUSICIANS SSOCIATION

3458 BLUEBONNET CIRCLE • FORT WORTH, TEXAS 76109

RAYMOND M. HAIR, JR.
President-Secretary
927-8478

August 16, 1984

Six Flags Over Texas, Inc.
U. S. Corporation Company
Littlefield Building
Austin, Texas 78701

Certified Mail

Gentlemen:

This letter is to be considered formal notice and as a formal demand that you recognize the Fort Worth Professional Musicians Association as the exclusive bargaining agent for all musicians who perform musical services at Six Flags Over Texas, and that you immediately bargain with respect to all mandatory bargaining subjects in connection with such musicians' present and future employment by Six Flags Over Texas, Inc., and Texas Flags, LTD.

This is to be considered an ongoing demand.

I will be available to meet with your representatives at 1:00 P. M., August 30, 1984, at 3458 Blue Bonnet Circle, Fort Worth, Texas. If the time and location are inconvenient, please contact us before August 24, 1984.

Very truly yours,

Raymond M. Hair, Jr., President
Fort Worth Professional Musicians
Association, Local 72, A. F. of M.

RMH/hd

"Music is the Universal Language of Mankind"

Exhibit
#126

SIX FLAGS
OVER TEXAS
[illegible]

[illegible]
P.O. BOX [illegible]
ARLINGTON, TEXAS [illegible]
[illegible]

August 24, 1984

Fort Worth Professional
Musicians Association
3458 Bluebonnet Cir.
Ft. Worth, TX 76109

Dear Mr. Hair,

Please be advised that we will not be attending your requested meeting, as Six Flags Over Texas does not at this time carry any musicians on our payroll, nor do we plan on doing so in the future. Musicians are either provided by the appearing name entertainment themselves (per contract) or on a group contact basis.

Sincerely,

Larry C

LARRY COX
Director of Administration

LC/bh

EXHIBIT
#127

Memo to Senator Jennings Randolph from Ned H. Guthrie - 9/25/84

My response to Question No. 5 is:

Please refer to the copy of a letter from A. F. of M. member, Willie Nelson, a well-known country band leader, in which he states that he is a member of the Austin, Fort Worth, Nashville, and Los Angeles A. F. of M. locals. Among other things, in his letter, Willie Nelson, together with the members of his band are saying they support S.281 and urge its passage. There are also attached hereto 20 other individually listed and signed affidavits from West Virginia Orchestra leaders/contractors indicating preference for A. F. of M. representation and their support for passage of S.281.

Of special significance is a letter from the A. P. O. L., the Association of Professional Orcnestra Leaders. The letter indicates there are 54 orchestra leaders who are members of Chicago Musicians Federation Local 10-208 A. F. of M. in the A. P. O. L.

September 7, 1984

The Honorable Don Nichols, Chairman
Subcommittee on Labor
United States Senate
Washington, D. C. 20510

Dear Senator Nichols:

Our names are Willie Nelson, Paul English, Bee Spears, Bobby Nelson, Jody Payne, Grady Martin, and Mickey Raphael. Our group has, for a number of years, provided its services in performances throughout the United States and many foreign countries under the name "WILLIE NELSON AND FAMILY". We are members of American Federation of Musicians Locals located in Austin, Texas, Fort Worth, Texas, Nashville, Tennessee, and Los Angeles, California.

Life is very difficult for most musicians. If we are to support ourselves and our families in this profession, we need to be able to bargain collectively with those who employ us.

We support Senate Bill 281 and House Resolution 5107 which would assure that musicians would have this right, and we urge the Congress to adopt this legislation.

We respectfully request this statement be included in the documents under consideration during the forthcoming Subcommittee hearing respecting this legislation.

Respectfully,

Willie Nelson
225 Main St.
Danbury, CT 06810

Paul English

Paul English

Bee Spears

Bobby Nelson

Bobby Nelson

Jody Payne

Jody Payne

Grady Martin

Grady Martin

Mickey Raphael

The Bailey Singers

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a 8 piece Rock band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W. Va. Ohio Ky. Va. Pa. on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 20 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing Arts Labor Relations Amendments and urge its passage.

Sincerely,

Thomas C Bailey Name
THOMAS C. BAILEY Leader or Co-Leader
THE BAILEY SINGERS Name of Band
Box 6545 Street
CHARLESTON, W. Va. City
25302 Zip Code
345-0331 Phone

P. O. Box 6545 · Charleston, W. Va. 25302 · 304/345-9222 – 345-0331

Date:

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a leader and/or [✓ co-leader] of a 5 piece Top 40 (band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in WV, Kentucky, OHIO on a varing schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 2 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing Arts Labor Relations Amendments and urge its passage.

Sincerely,

Phillip G. Frye Name
Phillip G. Frye Leader or Co-Leader
ARTIST Name of Band
Box 83 Address
Hughestown, WV
25110

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER of a 5 piece Country Rock band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in WEST VIRGINA on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 8 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely, Ben Belcher

Name

BEN BELCHER [✓ Leader] or Co-Leader

CROSS COUNTRY Name of Band

117 BELCHER RD Street

Chas City

25311 Zip Code

925-1627 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Co-Leader of a 5 piece Rock band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W. Va. + Ohio on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 4 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Timothy L Perry Name
Timothy - PERRY Leader or [✓ Co-Leader]
TEAZER Name of Band
Wisteria DR. Street
So. Chas. City
25309 Zip Code
768 - 2941 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a leader of a [illegible] piece [illegible] band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W. Va., Va. & Ohio on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 3 yr year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Bob Holiday Name
Leader Leader or Co-Leader
Southern Comfort Name of Band
707 6th St Street
Charleston, W.Va. City
25302 Zip Code
343 9185 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER of a [illegible] piece [illegible] band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in WEST VIRGINIA on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 19 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

____________ Name
ROBERT E. MAUST Leader or Co-Leader
BOB MAUST - PIANIST Name of Band
5365 KAREN CIRCLE Street
CROSS LANES, WV City
25313 Zip Code
776-2297 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER of a 4 piece JAZZ band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in West Virginia on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 31 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Hubert S. Jones Name

HUBERT S. JONES [✓ Leader] or Co-Leader

HUBERT JONES QUARTET Name of Band

1204 SECOND AVE Street

CHAS City

25302 Zip Code

343 9241 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER of a ONE(1) piece COUNTRY band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in West Virginia, Ohio, Kentucky on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 11 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

E. J. Flaherty Name

E.J. FLAHERTY [✓ Leader] or Co-Leader

E J FLAHERTY Name of Band

1387 STONE RD Street

CHARLESTON W.V. City

25314 Zip Code

(304) 344-5643 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a [✓ Leader] or Co Leader of a 2 piece Jazz band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in West Virginia on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 27 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

James L. Martin Name
James L. Martin [✓ Leader] or Co-Leader
Jim + Lisa Name of Band
106 Savilla Lane Street
Charleston, W.V. City
25312 Zip Code
(304) 744.2889 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a 3 piece Jazz band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in west va Va ohio on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 27 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Frank C. Thompson Name

FRANK C. THOMPSON [✓ Leader] or Co-Leader

Frank C Thompson Name of Band

5607 Elaine Dr. Street

Rand W. Va City

25306 Zip Code

925-4337 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER of a 15 piece DANCE band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W.VA. AND SURROUNDING on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 12 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Mel Gillespie Name
MEL GILLISPIE Leader [redacted]
MEL GILLISPIE ORCHESTRA Name of Band
WHITAKER HILL Street
HUNTINGTON, W.VA. City
25701 Zip Code
523-8989 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a three piece rock'n roll band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in the Charleston Area on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 10 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

James Spence Name
JAMES SPENCE [✓ Leader] or Co-Leader
Clean Streak Name of Band
1400 Highland Ave #705 Street
St Albans WVa City
25177 Zip Code
722-3593 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Co-Leader of a 5 piece Country band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in Southern W.Va. + Charleston on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 5 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Steve Trumon Name
Steve TrumON Leader or Co-Leader
Cowboy Jazz Name of Band
Rt 3 Box 40 Street
Procious City
25164 Zip Code
548-7135 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a 5 piece Country band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in Tri State on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 1 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Gary J. Boggs Name
Gary J. Boggs [✓ Leader] or Co-Leader
Southern Mix Name of Band
1208 Dupont Street
Belle W-Va. City
Zip Code
949-1257 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Co-Leader of a 4 piece Country band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in West Virginia on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 7 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

J Dennis Smith Name
Dennis Smith Leader or [✓ Co-Leader]
Saloon Name of Band
2008 E. DuPont Ave Street
Belle City
25015 Zip Code
949-1653 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Co-Leader of a 5 piece Country band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in Tri-State Area on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 1 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Name

Rick Hickman Leader or [✓ Co-Leader]

Larry Dalton & the Dalton Gang Name of Band

P.O. Box 501 Street

Ravenswood City

26164 Zip Code

304-273-5072 Phone

APOL

Association of Professional Orchestra Leaders

Suite 202 119 East Palatine Road Palatine, Illinois 60067 (312) 358-4710

Mr. Ned Guthrie
American Federation of Musicians
TEMPO
1500 Broadway
New York, New York 10036

Dear Mr Guthrie:

Enclosed is a TEMPO contribution in the amount of $100.00. At the last meeting of our 54 member Association of Professional Orchestra Leaders, all of whom belong to Local 10 - 208 Chicago, we voted that we make this contribution. The Association is designed to work within our Local's guidelines to promote live union music. It is also a source of music business information and a social outlet for our members.

We feel that your efforts deserve our support and that this donation will be put to very good use in support of our common musicial interests. If you have any questions about the A.P.O.L. you may contact me at my home address.

Fraternally,

5/14/84

Kenneth E. Wojcik
Treasurer - A.P.O.L.
6131 W. Barry Avenue
Chicago, Il. 60634

c.c. Irv Trisko
Paul Ciminello

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a 4 piece Country-Rock band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W.Va on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 7 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Roger W. Keefer Name
Roger W. Keefer Leader or Co-Leader
Drugstore Cowboys Name of Band
2220 Tate Dr. Street
Charleston City
25312 Zip Code
3459114 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a LEADER ARTIST of a 3 piece C/W-Rock band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W.VA. OHIO on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 25 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Emory Brown Name
EMORY BROWN [✓ Leader] or Co-Leader
Emory Brown Band Name of Band
825 B INDIANA AVE Street
CHAS. W.VA. City
25311 Zip Code
346-8413 Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader-Artist of a 1 piece Country band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W. Va. + Maryland on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 5 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

Dennis A Boucher Name

Dennis A Boucher Leader or Co-Leader

Teac Gibon Show Name of Band

Lot 74 Winfield Mobile Home Street

Winfield, W. Va. City

25213 Zip Code

NONE Phone

Senator Jennings Randolph
United States Senate
The Capitol
Washington, D. C. 20510

Dear Senator Randolph:

I am a Leader of a 4 piece Country + SHOW Dance band. We play in clubs and lounges, both casual and weekly for a major part of the income for our families.

Some jobs are booked by myself or other band members. Occasionally, I accept bookings in clubs by Booking Agents for a commission fee paid to the booker.

We play in W. VA Area on a varying schedule of one or more nights a week.

When and if there is a labor problem with an establishment or other person I want to be represented by my Union Business Agents and Executive Board. I am a 20 year member of the Appalachian Regional Musicians Union Local 136, American Federation of Musicians.

I support S.281, the Performing arts Labor Relations Amendments and urge its passage.

Sincerely,

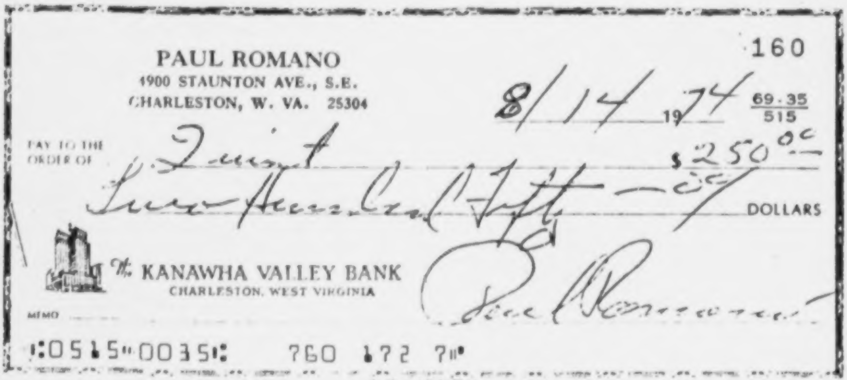
Gary Hart Name
GAry HArt Leader or Co-Leader
Night Shift Name of Band
Lot 9 LAke Sh. Street
CharlestoN City
25313 Zip Code
(304) 776-1262 Phone

Memo to Senator Jennings Randolph from Ned H. Guthrie - 9/25/84

My response to Question No. 7 is:

Yes - I do believe musicians are unjustly restrained by the NLRB interpretation of the status of the musicians union resulting in excessive and unnecessary lawsuits, with charges filed to NLRB of cases against the union, thus preventing the union from aiding in ordinary collections of defaults such as the N.S.F. check herein paid by a defaulter to the band Quint.

Also, in answer to Question No. 7, please consider the chaos the musicians experienced as described by the newspaper clippings pertaining to a $29,500,000.00 civil lawsuit against Local 362 A. F. of M., Huntington, West Virginia, together with Secondary Boycott charges. Said charges instituted by Milton Opry House, Milton, West Virginia.



160

PAUL ROMANO
1900 STAUNTON AVE., S.E.
CHARLESTON, W. VA. 25304

8/14 1974

69-35
515

PAY TO THE ORDER OF Quint $250.00

Two Hundred Fifty —00/ DOLLARS

The KANAWHA VALLEY BANK
CHARLESTON, WEST VIRGINIA

MEMO

Paul Romano

⑆0515⑈0035⑆ 760 172 7⑈

RETURNED BY
THE KANAWHA
VALLEY BANK
CHARLESTON/WEST VIRGINIA [illegible]

RETURNED UNPAID FOR
REASON INDICATED
☑ INSUFFICIENT FUNDS
☐ ENDORSEMENT
☐ MISSING
☐ NOT AS DRAWN
☐ WRONG BANK
☐ SIGNATURE
☐ UNCOLLECTED FUNDS
☐ Other Reason (Specify)

KATES PRINTING CO — 2621

MOUNTAINEER
OPRY HOUSE

I-64 Exit 7 Milton, W.Va.

OPRY SCHEDULE FOR APRIL

2

THE GRASS REFLECTIONS Washington, D.C.
BLOOMING GRASS . . . .
THE DENNIE & PHYLIS CRISP SHOW

9

THE COUNTRY LIMIT BAND & (GUEST) . . . . . .
CURLY PARKER & THE BUFFALO CREEK EXPRESS
ECK GIBSON & THE MOUNTAINEER RAMBLERS

16

THE GOINS BROTHERS from Nashville
THE KANAWHA BLUEGRASS
DAVID KRIZER COUNTRY SHOW

23

THE SONS OF BLUEGRASS
RONNIE SPRIG'S & THE COUNTRY COUSINS . . . .
THE TEAYS VALLEY BOYS

30

THE CONNER FAMILY BAND from Virginia
with Guests
FROG AND THE GREEN HORNS Ohio
THE HOCKING VALLEY BOYS From Marietta Ohio

Program Subject To Change Without Notice

To Milton Opera House File

Milton Music Theater Files $29 Million Suit

By JOHANNA FISHER
Of The Daily Mail Staff

A $29.5 million suit was filed today in U.S. District Court against the American Federation of Musicians (AFM) and Local 362 of the Musician's Protective Assn on charges of conspiring to compel the operators of the Mountaineer Opry House, Milton to sign a union shop agreement.

The suit was brought against the musician's unions by Paul King of Cabell County, president of the entertainment firm, and Jim Roberts of Kanawha County, a free lance announcer and sound engineer.

The plaintiffs contend in the suit seeking to recover damages for violation of the National Labor Relations Act that AFM and the local conspired maliciously to force musicians to secondarily boycott the country and western music theater.

Local 362 Huntington, an AFM local, was named in the suit as The Musician's Protective Assn.

The complaint charges the musicians' union conspired to place the plaintiff's names on the National Unfair List which was published in the May 15, 1973 and June, 1973, issues of "International Musician," a trade publication.

The defendants, according to the suit, notified various persons in October and September, 1975, that King and Roberts were guilty of failing to properly pay performers and artists.

As a consequence, the suit contends the performers were stopped from "appearing and contracting" with the theater stating that if they did so they would be subject to sanctions and fines.

King and Roberts contend that there is

(Turn to Pg. 3A, Col. 3)

MILTON

Continued From Page One

no labor dispute between their firm and its employes "... and there never has been any lawful labor objective to justify the placing of the plaintiff's name on unfair or defaulter's lists."

The secondary boycott, the suit said, was designed to compel Mountaineer Opry House "to sign a union shop agreement or to drive it out of business."

The unions unlawfully threatened and coerced the artists, performers and other individual orchestra leaders to keep them from performing at shows "to force a union shop agreement," the suit said.

King and Roberts listed eight causes of action against the unions to collect damages. Seven of the causes asked for $4 million each and one demanded $1.5 million.

The plaintiffs also are seeking an injunction against the unions to restrain them from interferring with business of the theater.

Representing King and Roberts is the law firm of Baer, Napier and Colburn of Huntington.

Milton [illegible] & etc

Daily Mail City Page Section C

CHARLESTON, WEST VIRGINIA, WEDNESDAY EVENING, JULY 14, 1976

Restraining Order Deferred

Opry House Hearing Against Musicians Set Next Week

By JOHANNA FISHER
Of The Daily Mail Staff

U. S. District Judge K. K. Hall denied a motion today in federal court by operators of the Mountaineer Opry House, Milton, who were seeking a temporary injunction against the American Federation of Musicians (AFM) and Local 332 of the Musician's Protective Assn.

However, Judge Hall set a hearing July 22, on request for a preliminary injunction against the musicians' unions in a $29.5 million suit filed yesterday by the operators. The suit charges the unions conspired the Opry House to sign a union shop agreement.

The suit was brought against the unions by Paul King of Cabell County, president of the entertainment firm, and Jim Roberts of Kanawha County, a free lance announcer and sound engineer.

The men appeared in court today with attorney James Colburn of Huntington in order to obtain a temporary restraining order to stop what they term a secondary boycott of the country and western music theater.

Colburn cited the operators' failure to obtain two acts for upcoming performances due to the boycott of the theater's business.

The complaint charges that the musicians' unions conspired to place the plaintiffs' names on the National Unfair List which was published twice in issues of the "International Musician," a trade publication.

"They've contracted with the Stoneman Family of Nashville, Tenn., to appear at the theater in August. They have reason to believe that that group will receive a communication from the union urging them not to perform," Colburn told Judge Hall in the hearing.

Attorneys for the unions were not present today and Judge Hall said he would continue the hearing until next Thursday so the union could be represented.

"From reading your complaint, I'm not sure as to the immediacy of the situation. I'm not sure that a temporary restraining order is necessary at this time," the judge said.

Judge Hall said federal law requires the issuance of a temporary restraining order if the defendant is not represented only in cases where an immediate and irreparable injury is imminent.

The defendants, the suit charges, notified various persons in October and September, 1975 that King and Roberts were guilty of failing to properly pay performers and artists.

Colburn said a group, Jim and Jesse and the Virginia Boys were contacted by the unions not to appear at the theater because the operators were on the National Unfair List.

The suit charges that performers are stopped from appearing and contracting with the theater stating that if they do so they would be subject to [illegible] and [illegible].

The suit said the secondary boycott was designed to compel Mountaineer Opry House "to sign a union shop agreement or to drive it out of business."

LAW OFFICES
VAN ARKEL, KAISER, GRESSMAN, ROSENBERG, AND DRIESEN
1828 L STREET, N.W., SUITE 701
WASHINGTON, D.C. 20036

HENRY KAISER
EUGENE GRESSMAN
RONALD ROSENBERG
GEORGE B. DRIESEN
MICHAEL WOLF

OF COUNSEL
GERHARD P. VAN ARKEL

TEL. (202) 466-8400

July 28, 1976

COPY

Leroy Miller, Esq.
NLRB, Region 9
550 Main Street
Room 3003
Cincinnati, Ohio 45202

Re: American Federation of Musicians, et al. (Jim McReynolds d/b/a Jim & Jesse & The Virginia Boys)
Case No. 9-CC-32-1

Dear Mr. Miller:

Pursuant to our telephone conversation of July 21, 1976 the following are the facts relating to the above-referenced case.

On April 28, 1976, the Mountaineer Opry House was placed on the AFM's Unfair List for failing to meet and maintain area standards. Specifically, the Opry House was paying inadequate wages to employee musicians and, in at least one instance, had insisted that a musician perform without pay.

Subsequent to its placement on the Unfair List, a group known as "Jim and Jesse and the Virginia Boys" entered into a performance contract with the Opry House. The group mailed a copy of their contract to Local 362, AFM pursuant to the Federation's By-laws. The local returned the contract, advising the group in writing that the Opry House had been placed on the Federations's Unfair List.

After receiving notification from the Local of the Unfair Listing, "Jesse" called Junior Wallace Secretary of Local 362, and requested that an exception be granted to allow the group to perform at the Opry House. Mr. Wallace informed Jesse that the local had no authority to make such exception. Mr. Wallace stated nothing more than that the Opry House was on the list and that Jim and Jesse should act accordingly. Jesse advised that the group would not appear at the Opry House because of the listing. From these facts, the invalidity of the charge is clearly established. First, there was no agreement between Wallace and "Jim and Jesse" which would have constituted a violation of Section 8(e). Second, the Opry House was placed on the Unfair List for failing to meet area standards; the union's protection of its members wages and working conditions was primary in nature and therefore beyond the scope of Section 8(e).

As I mentioned to you over the telephone, I also believe that Mountaineer Opry House does not satisfy the jurisdictional requirements established by the Board (i.e., $500,000 annual business). If found to be correct, then this fact would also necessitate dismissal of the charge.

Please contact me if you need any additional information, and keep me advised of your disposition of this matter.

Sincerely,

Michael Wolf

bc: Mr. James B. McIntyre

Memo to Senator Jennings Randolph from Ned H. Guthrie - 9/25/84

My response to Question No. 11 is similar to Question No. 7:

* For example, there was a case by Dottie Reynolds against the Ramada Inn in Beckley, West Virginia occasioned by the cancellation of a previously contracted return engagement. Dottie Reynolds, a black female band leader, stated her band drew too many blacks on a Saturday night during the first two week run. The union could not ask traveling bands from out of state, etc. to refrain from performing there even though the only thing we could apply was the cancellation and default of two weeks work and wages.

Another case, which is one of out right racial discrimination, and is a matter of record at the Human Rights Commission of West Virginia, Case No. ER 50-81 and ER 51-81. Henry Graves led a band of 9 pieces with the name Central Heat. He was booked and engaged to play for a public youth dance, and the employers were Marmet (West Virginia) Recreation Department, the Kanawha County (West Virginia) Parks and Recreation Committee, and the Music Performance Trust Funds as co-sponsors and employers. Even though the fact was known that the band was composed of 9 black musicians the Marmet Recreation Department changed its mind and instructed the Kanawha County Parks and Recreation Committee to notify the union (myself, then the President and co-ordinator of these Trust Fund jobs) that Henry Graves would not be allowed to perform with an all black group. Further the band could play the job if Henry Graves would change his personnel and bring half white and half black musicians. The union not being considered as primary to the contract and not representative due to NLRB doctrine, could only urge the band to take the case to the Human Rights Commission. This highly unfair discriminatory action resulted in the break up of the band in utter disillusionment and disappointment because it broke the spirit of Henry Graves and his musicians.

This case is documented in a deposition attached hereto by Lynne Sandy, witness and interested party. It is also Exhibit D in my written testimony for the Senate Subcommittee Hearing on September 13, 1984.

* Dottie Reynolds was a traveling band from Dayton, Ohio.

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION
215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

COMMISSIONERS
[illegible]

TELEPHONE 348 2616
JOHN D. ROCKEFELLER IV
Governor
HOWARD D. KENNEY
Executive Director

August 27, 1980

Ned Guthrie
Musicians Union Local 136
1562 Kanawha Blvd. East
Charleston, WV 25305

RE: ER-50-81 & ER-51-81

Dear Mr. Guthrie:

This letter is to request your presence as a third party witness, at a Fact Finding Conference to be held Thursday, September 11, 1980, at 10:00 a.m., at the West Virginia Human Rights Commission located at 215 Professional Building, 1036 Quarrier Street, Charleston, West Virginia.

Your participation in this matter would be appreciated.

Sincerely,

Terry Nearhoof
Terry Nearhoof
Investigator

RTN/aj

Exhibit D

LYNNE SANDY, BOOKING AGENT, A. F. of M. No. 10004
2419 Washington Street, E., Charleston, West Virginia 25311
(304)346-8861

RE: S.281 and H.R.5107

Since the age of nineteen, for thirteen years, I have been performing live music, and since 1978 I have been a licensed booking agent for the American Federation of Musicians. In reference to the Performing Arts Labor Relations Act (S.281) introduced by the Honorable Jennings Randolph of West Virginia, I am compelled to state my feelings as both an observer and a participant in labor-related matters where musicians are concerned.

A young black musician named Henry Graves, on behalf of his all-black group, took one local city and one county Parks and Recreation Agency to the Human Rights Commission on a discrimination complaint. As an active and interested member of the Musicians Union Local 136, I was invited by then-President of Local 136 to attend a "fact-finding conference" held by the Commission.

Without recounting the details of the case, I can say three things about why I thought this hearing was an inadequate forum for resolving the dispute:

1. It seemed obvious from their nervousness of manner that the respondents were guilty of discrimination. There is no way a public agency will admit to discriminatory words or actions, because of political ramifications. Henry Graves was so embarrassed and humiliated -- the town of Marmet is generally known to be racially tense.
2. Terry Nearhoof, the woman who conducted the Commission proceeding, was very abrupt and impatient, especially when addressing Union representative Guthrie. She created a very unbalanced and tense mood in the room.
3. Most disturbing was the fact that a Musicians Performance Trust Fund contract defined Henry Graves, the musician, as a "leader" and not an EMPLOYEE. This put Graves in the same category as his adversaries, the two Parks and Recreation

> agencies. Because the Union was not "primary" in the Trust Fund contract, Graves was not afforded the right of representation as an EMPLOYEE in this situation. The usual rules for arbitration procedures did not apply. How absurd! Guthrie was forced to go to the Human Rights Commission who, I felt were distinctly indifferent toward Henry Graves' grievance.

This incident is indicative of the second-class treatment thousand of performers have endured for decades. We cope, without remedy, with endless indignities and infringements of our rights. We simply want the same assurances, rights, and securities guaranteed other hard-working citizens.

"How can the Union help me?" Henry Graves asked Ned Guthrie with tears in his eyes. "I have two children to raise. How can I make it in an America like this?" Graves' band broke up, he gave up music and joined the service. This is only one sad ending to one of many sad stories.

There is no question that passage of Senate Bill 281 will improve the quality of life for performers everywhere.

Sincerely,

Lynne Sandy

Lynne Sandy

This committee is adjourned.

[Whereupon, at 12:42 p.m., the subcommittee was adjourned.]

OVERSIGHT OF THE TAFT-HARTLEY ACT, THE RAILWAY LABOR ACT, AND THE NATIONAL LABOR RELATIONS ACT

TUESDAY, SEPTEMBER 18, 1984

U.S. Senate,
Committee on Labor and Human Resources,
Subcommittee on Labor,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:34 a.m., in room SR-485, Russell Senate Office Building, Senator Don Nickles (chairman of the subcommittee) presiding.

Present: Senator Nickles.

OPENING STATEMENT OF SENATOR NICKLES

Senator Nickles. Good morning.

Today is the second and final day the Labor Subcommittee will have oversight hearings on the Taft-Hartley and Railway Labor Acts.

I would like to apologize for the accommodations that we have. The full Labor Committee is using our regular hearing room, so that forced us to be in this building. I do appreciate your interest and that of our witnesses today.

Our first witness is the honorable Senator from Idaho, my good friend and distinguished colleague, Senator Symms.

STATEMENT OF HON. STEVEN D. SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator Symms. Thank you very much, Mr. Chairman, and first let me commend you and your Subcommittee on Labor for holding these hearings to focus congressional attention on the Taft-Hartley Act.

This is an increasingly crucial area to workers, many of whom could face unemployment if Congress does not act in the near future to protect the rights of workers in this country.

In today's economic environment, the effects of the Taft-Hartley Act are quite different from the intentions of its authors. Many of my constituents who are unemployed could testify here about these effects.

After hearing this story, Mr Chairman, I believe you will agree that the Congress has a responsibility to pursue this issue with vigor, and I commend you for taking the leadership to that end.

In the next few minutes, I want to recount the events that wrecked the jobs, security, and the financial future of many of my constituents in northern Idaho.

Located between Missoula, MT, and Spokane, WA, is an area in northern Idaho called the Silver Valley. Prior to its closure, the Bunker Hill Mining Co., previously owned by the Gulf Resources and Chemical Co., employed 2,100 persons and produced 20 percent of this Nation's lead, zinc, and refined silver. The facility contained a lead and zinc smelter, two mines, a lead plant, a silver refinery, and a phosphate processing plant. The facility is one of the few remaining refineries of this type operating in the United States. So, for strategic as well as economic reasons, this complex is important to the Nation as well as to Idaho and the Pacific Northwest in terms of employment for her citizens.

Let me recount briefly the recent history of the Bunker Hill operation. In 1976, the Bunker Hill Co. had net profits of $5.6 million. A strike occurred in 1977, and the company lost $1 million. But in 1980, an excellent year, the company had net profits that reached a level of $17.5 million. However, with the worldwide recession and falling prices of metals, the company plunged down the financial rollercoaster in 1981. It is from this point that I want to retrace the chronological events to 1984.

On August 25, 1981, the Gulf Resources & Chemical Co. announced its decision to close the Bunker Hill Mining Co. due to substantial operating losses during the year. In the fall of 1981, following Gulf Resources' announcement, Bunker Hill proceeded to lay off employees as operations were reduced both at its mines and at the ore treatment facilities. By January 1982, 1,500 employees were laid off in Kellog, ID, by Bunker Hill.

Subsequent to that announcement and for the next couple of months, efforts were made by both a community task force and Gulf Resources to find an interested buyer for Bunker Hill who would continue operations. I have to say that one of the local businessmen, Dale Lebine, put countless hours of work into this, undertook an enormous task, a labor of love for his community. Several potential buyers examined the property and conducted negotiations with Gulf Resources. However, no potential buyer emerged.

In December 1981, a group of prospective investors, including H.F. Magnuson, Duane Hagedone both Idaho businessmen, and William Pfeiffer, a California businessman and a native of Wallace, ID, embarked on negotiations with Gulf Resources and secured an option to purchase all the assets of Bunker Hill for $65 million. The expiration date for the purchase option was December 31, 1981. However, the expiration date was extended by agreement to January 22, 1982. At the time the option to purchase was obtained from Gulf Resources, the purchasing group announced that their ability to interest other large investors in acquiring the Bunker Hill Co. and to consummate the transaction was dependent upon their ability to substantially reduce the operating expenses at Bunker Hill. This would require significant, but absolutely necessary, concessions from the plant's employees.

Further, the purchasing group asked for similar concessions from the important suppliers of goods and services to Bunker Hill, such as the Washington Water Power Co., the supplier of all natural gas and electricity used in the operation, and the Union Pacific Railroad Co., which was the primary transportation source for the company.

In January 1982, the purchasing group then set about implementing their program, and on January 11, 1982, we thought that success had finally been reached when J.R. Simplot of Boise, ID, agreed to join the purchasing group. Simplot's offer was conditional, subject to the group's ability to arrive at an acceptable labor contract with the union representatives and the employees, their ability to obtain satisfactory financing, and the resolution of certain liability issues.

About that same time, the purchasing group sought and obtained substantial concessions from the Washington Water Power Co., and the Union Pacific Railroad and other important vendors.

On January 4 through 11, local representatives of the United Steelworkers' Union of America held discussions with the purchasing group that led to a new proposed labor agreement being submitted to the union membership. The proposal, effective upon the acquisition of Bunker Hill assets, called for the employment of approximately 1,500 workers and a reduction of approximately 25 percent in wages and fringe benefits.

The proposed contract also provided for substantial revision to the work rules and management rights provisions of the existing contract.

On January 13, 1982, the wage reduction package was delivered to Mr. Ken Flatt, the president of United Steelworkers' Union Local No. 7854. Copies were made available to the rank and file membership.

On January 14, Mr. Duane Hagadone, a spokesman for the investor group, went on local radio describing the wage-reduction agreement, asking the membership to consider the agreement and to understand that the wage-reduction package needed to be accepted before the investors' bankers would consider endorsing the purchase of Bunker Hill.

The investors stated from the outset that they were not in the position to negotiate with the union in any manner, and that the union would have to accept the responsibility of accepting or rejecting the wage-reduction package.

On January 15, Mr. Hagadone was back on the radio, answering questions.

On January 16, 1982, the union leadership called a meeting to evaluate and discuss the proposal. Present at the meeting were representatives of the United Steelworkers from Pittsburgh and Los Angeles. It was quite apparent from the beginning that the union leadership did not want this agreement ratified and lobbied long and hard to have the local membership vote against the proposal.

Following the receipt of the proposal, the Steelworkers' officials first announced that the proposed agreement would not be acceptable to them and expressed doubt as to whether the agreement would even be submitted to a vote of the union members. After a rather thorough airing of the views of both the union leadership and the purchasing group, the leadership announced that it would put the matter to a vote of its members on January 17, 1982.

On January 17, 1982, the vote was taken by secret ballot. Some ballots contained a disclaimer stating that this would be an advisory vote. The union leadership did not make this fact known to the union membership, and few, if any, were under the impression that the vote taken on Sunday, the 17, would be anything less than the approval or disapproved of the agreement.

The votes were tallied three times: 696 members voted for acceptance of the proposal, and 505 voted against it. Immediately following the favorable vote, the officers and executive committee of the Steelworkers' local all resigned their offices.

What took place Sunday evening after the vote, I believe, was clearly planned and in total disregard for the majority who voted to accept the wage agreement. Since the executive leadership of No. 7854 resigned en masse, the local union then reverted to the trusteeship of the United Steelworkers in Pittsburgh.

On January 18, 1982, the national representatives of the Steelworkers' Union announced publicly that they would not sign the agreement as approved by the membership and that the vote taken on January 17 was merely advisory. In addition, the national union filed official documents with the Department of Labor to place local union No. 7854 under administratorship and to appoint Mr. Lavern Melton as administrator over the affairs of the local union. The administrator then reappointed most of the officers who had previously resigned.

On January 18, the rank and file of the local union, who felt abandoned by the national union's actions, called for a meeting to discuss the actions of the leadership. The membership then circulated a petition calling for the leadership to honor the vote and sign the agreement.

On January 19, a group of workers, frustrated with the efforts of the national representatives of the Steelworkers' Union who were attempting to block the signing of the agreement, met and elected new officers for the local union. The newly elected president, Ron Byrd, who had voted against accepting the wage agreement, felt the majority of the union members had spoken through the election, and the national union should recognize their vote

On January 19, Tuesday, the newly elected leadership of the local union signed the agreement.

On January 20, 1982, because the national union was unwilling to accept the proposed agreement ratified by the local union and the actions of the national and local unions following the vote left many legal uncertainties, the purchasing group abandoned their efforts to acquire the Bunker Hill assets.

On January 20, 1982, Congressman Larry Craig, First District of Idaho, met with Mr. Petris, of the United Steelworkers of America's regional representative for District 38, and Mr. McKee, the national secretary from Pittsburgh. No progress was made during the 2 hours of talks between Congressman Craig and these union leaders.

On January 21, 1982, a class action suit on behalf of the local members was filed in the U.S. District Court of Idaho against the United Steelworkers of America seeking to enjoin it from interfering with the local union's approval of the agreement.

On February 2, 1982, Congressman Craig and I traveled to Pittsburgh in an attempt to convince the national union to honor the vote taken on January 17. The national union leadership did not want to discuss the vote because they continued to say that the vote was only advisory in nature and not binding. We also discussed the action by the local union officials and the trustee assumption issue. This procedure seemed to be planned as a response to the possible approval of the age package presented by the investor group. Once the local union reverted into trusteeship, the rank and file members were helpless to accomplish anything of real substance on their own behalf.

We left Pittsburgh with a feeling of helplessness and frustration. The Steelworkers national leadership was not concerned with the jobs, but they were concerned with their own stature and ability to negotiate future contracts that they had with other employers in other areas in the country. They did not want to jeopardize their future negotiating positions by agreeing to a 25-percent lower wage package in Idaho. So we had a situation where the union bosses in Pittsburgh were saying that the people in Idaho could not accept the jobs that they wanted. That was why we felt a sense of frustration.

On February 3, 1982, Mr. Petris, the Steelworkers' regional representative, called by phone to express his concern over what Congressman Craig and I might do next. Our suggestion was very simple: Get the negotiations going again by calling the investor group. He did, and the representatives of the union and the investor group started a new round of discussions. The negotiations continued throughout the week and stopped on February 12.

A news conference to announce new developments was scheduled for February 13, but any new arrangements failed to materialize.

On February 18, the Governor of Idaho vetoed the Right to Work legislation. The legislation was referred back to the Idaho House, where the veto was overridden. However, the override failed in the Idaho Senate by three votes. With the failure of any Right to Work legislation, the union immediately broke off all negotiations, and Mr. Petris left Spokane, WA, and the Silver Valley for Los Angeles.

In March 1982, the sintering plant was sold by Gulf and no new attempts to purchase the Bunker Hill Mining Co. emerged. In other words, that plant was moved out, which was an important piece of equipment if the investor group were to buy the company. The sintering plant was needed to process the nonferrous metals and was thus an essential element of the entire operation.

In the days and weeks that followed the purchase group's final action, various community and political leaders, including Senator McClure, Congressman Craig, and I, had numerous discussions with the national representatives of the Steelworkers in an attempt to resolve the matter.

From these meetings, it became obvious that the Steelworkers' position was based upon its belief that accepting the proposal of the investor group would establish an adverse precedent for its dealings with other employers. The national union was more interested in establishing a precedent than the jobs, of 1,500 union members in northern Idaho, who had paid dues faithfully to the headquarters in Pittsburgh over many, many years. Despite the fact, that they had paid $400,000 in dues the preceding year, they got little support from the headquarters in Pittsburgh when they needed it so badly to help them ratify the agreement.

Sadly, the local union member was fighting the United Steelworkers and their large legal staff in Pittsburgh for the right to work in a small community in Idaho. During the next 8 months, several individuals and companies attempted to purchase Bunker Hill from Gulf. However, the negotiations seemed to come to a standstill once the unions became involved.

On November 6, 1982, after the union contracts had expired and the Bunker Hill facility was completely closed, Duana Hagadone, Harry Magnuson, Jack Kendrick, and J.R. Simplot purchased the mining operation.

On September 18, 1984, Bunker Hill, in the Crescent Mine, which is the only facility operating, employs 72 nonunion workers, a far cry from 3 years ago when 2,100 workers supported their families in the Silver Valley of Idaho.

Mr. Chairman, I have gathered a set of newspaper articles from northern Idaho and across the country, including the Washington Post and the Wall Street Journal, which recounts this sad saga in American labor/management relations. I would ask that these records be made a part of the record.

In addition, Mr. Chairman, I have acquired a variety of exhibits, including press releases, a letter report from the United Steelworkers Union on the financial status of Bunker Hill prior to its closing, a memo from Piatt Hull, attorney for the local union members, to Ron Byrd and employees of Bunker Hill, and correspondence between Mr. Lloyd McBride, president of the United Steelworkers of American Union and the Department of Labor.

I would ask that this information also be made part of the record of this committee's hearing.

Not only, I think, should we think of the personal tragedy of this event, but of the impact on the entire geographic area. I want to explain briefly the impact on income, unemployment, mineral production, and tax revenue which the closing of the mine had.

The effects on Idaho: Annual income dropped $55 million. This $55 million represents 1.3 percent of all the salaries paid in the entire State of Idaho.

The effects on the area: The secondary impact on fringe businesses that dealt with the mine were $30 million.

Employment loss: 2,100 members of the Bunker Hill of Kellog; 2,000 to 5,000 support employees within the State; 1,000 secondary employees throughout the rest of the country.

Tax revenue loss: Idaho annual tax loss of $8.5 million; tax loss from closure was $9 million, Federal income tax; $1 million State income tax; $1.6 million in property tax; $160,000 in mine license taxes, and $136,000 in sales taxes. The total revenue loss to all governments was $11.9 million.

The mine closing effected 41 industries nationwide, reducing employment by 5,761 people and sales by $569 million.

Now, Mr. Chairman, it is hard to look at this situation objectively and say that the United Steelworkers of America had anything to lose by allowing workers in Idaho to keep their jobs. The only rationale for a wage reduction was to make Bunker Hill a feasible economic unit again. And as the January 17, 1982 vote attests, few believed it was an attempt by management to exploit the situation. Both capitalists and the workers were struggling to preserve a dying industry. The last thing they needed was interference, obstruction and fear from Pittsburgh.

Once again, I would like to thank you for the opportunity to testify. And just as an aside, the Crescent Mine, which I mentioned, which is a small part of this overall operation, is now back in production. Though they are operating with a work force of somewhere about 70 workers, where it used to operate with nearly 100 workers, they are producing twice as much muck or as much they were prior to this incident. So there is obvious evidence that the management of the crew at the old Bunker Hill simply was not efficient enough to keep the mine in a productive situation. I think it is a sad thing for this country, and a tragedy for the families involved. It is very difficult for them to sell their houses in that small community where everybody else in town is trying to sell their house. Many of these people literally lost their life savings, which were in their homes, as well as their jobs. It is a tragedy for our State, as well as for the Nation in terms of national security, to have lost 20 percent of the lead, zinc, and silver production. And whether or not it will ever be restarted remains to be seen.

Thank you very much.

Senator NICKLES. Thank you, Senator Symms.

[The prepared statement of Senator Symms and additional material supplied for the record follow:]

HEARING BEFORE THE SUBCOMMITTEE ON LABOR
OF
LABOR AND HUMAN RESOURCES COMMITTEE

STATEMENT BY

U.S. SENATOR STEVE SYMMS

September 18, 1984

Good Morning, Senator Nickles. First, let me commend you, and your Subcommittee on Labor for holding this hearing to focus Congressional attention on the Taft-Hartley Act (The National Labor Relations Act). This is an increasingly crucial area to workers, many of whom could face unemployment if Congress does not act in the near future.

In today's economic environment, the effects of Taft-Hartley are quite different from the intentions of its authors. Many of my constituents who are unemployed could testify here about these effects. After hearing this stroy, I believe you will agree, Mr. Chairman, that Congress has a moral responsibility to pursue this issue with vigor. In the next few minutes, I want to recount the events that wrecked the jobs, security, and financial future of many of my constituents in Northern Idaho.

Located between Missoula, Montana, and Spokane, Washington, is an area in Northern Idaho called the Silver Valley. Prior to its closure, the Bunker Hill Minning Company, (previously owned by the Gulf Resources and Chemical Company), employed 2100 persons, and produced 20% of this nation's lead, zinc, and refinned silver. The facility contained a lead and zinc smelter, two mines, a lead plant, silver refinery, and a phosphate processing plant. The facility is one of the few remaining refineries of this type operating in the United States. For strategic and economic reasons, this complex is important to the nation as well as to Idaho and the Pacific Northwest.

Let me recount quickly the recent history of the Bunker Hill operation. In 1976, the Bunker Hill Company had net profits of $5.6 million. A strike occurred in 1977 and the company lost $1 million. But, 1980 was an excellent year for the company and net profits reached a level of $17.5 million. However, with the worldwide recession and falling prices, the company plunged down the financial rollercoaster in 1981. It is from this point I want to retrace the chronological events to 1984:

***August 25, 1981: The Gulf Resources and Chemical Corporation announced its decision to close the Bunker Hill Minning Company due to substantial operating losses during the year.

***Fall of 1981: Following Gulf Resources' announcement, Bunker Hill proceeded to lay off employees in states as operations

WERE REDUCED BOTH AT ITS MINES AND THE ORE-TREATMENT FACILITIES. BY JANUARY 1982, 1500 EMPLOYEES WERE LAID OFF BY BUNKER HILL.

SUBSEQUENT TO THAT ANNOUNCEMENT AND FOR THE NEXT COUPLE OF MONTHS, EFFORTS WERE MADE BY BOTH A COMMUNITY TASK FORCE AND GULF RESOURCES TO FIND AN INTERESTED BUYER FOR BUNKER HILL WHO WOULD CONTINUE OPERATIONS. ALTHOUGH SEVERAL POTENTIAL BUYERS EXAMINED THE PROPERTIES AND CONDUCTED NEGOTIATIONS WITH GULF RESOURCES, NO POTENTIAL BUYER EMERGED.

***NOVEMBER AND DECEMBER 1981: A GROUP OF PROSPECTIVE INVESTORS, INCLUDING H.F. MAGNUSON, A WALLACE, IDAHO MINNING EXECUTIVE, DUANE HAGEDONE, A COUER D'ALENE, IDAHO NEWSPAPER OWNER, AND J. WILLIAM PFEIFFER, A CALIFORNIA BUSINESS CONSULTANT AND NATIVE OF WALLACE, IDAHO, EMBARKED UPON NEGOTIATIONS WITH GULF RESOURCES AND SECURED AN OPTION TO PURCHASE ALL THE ASSETS OF THE BUNKER HILL COMPANY FOR $65 MILLION. THE ORGINAL EXPIRATION DATE FOR THE PURCHASE OPTION WAS DECEMBER 31, 1981. HOWEVER, THE EXPIRATION DATE WAS EXTENDED BY AGREEMENT TO JANUARY 22, 1982.

AT THE TIME THE OPTION TO PURCHASE WAS OBTAINED FROM GULF RESOURCES, THE PURCHASING GROUP ANNOUNCED THAT THEIR ABILITY TO INTEREST OTHER LARGE INVESTORS IN ACQUIRING THE BUNKER HILL COMPANY AND TO CONSUMMATE THE TRANSACTION WAS DEPENDENT UPON THEIR ABILITY TO SUBSTANTIALLY REDUCE THE OPERATING EXPENSES AT BUNKER HILL.

This would require significant, but absolutely necessary concessions from the plant's employees. Further, the purchasing group asked for similar concessions from the important suppliers of goods and services to Bunker Hill such as the Washington Water Power Company--the supplier of all natural gas and electricity used in the operation--and Union Pacific Railroad Company.

***January, 1982: The purchasing group then set about implementing their program and on January 11, 1982, announced that the J.R. Simplot Company of Boise, Idaho, had agreed to join the purchasing group. Simplot's offer was conditional, subject to their ability to arrive at an acceptable labor contract with the Union representing the employees, the ability to obtain satisfactory financing and the resolution of certain liablility issues.

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in wages and fringe benefits.

The proposed contract also provided for substantial revision to the work rules and management rights provisions of the existing contract.

***January 13, 1982: The wage reduction package was delivered to Mr. Ken Flatt, President of United Steelworker's of America Union local #7854. Copies were made available to the rank and file membership.

***January 14, 1982: Mr. Duane Hagadone, a spokesman for the investor group went on local radio describing the wage-reduction agreement, asking the membership to consider the agreement and to understand that the wage-reduction package needed to be accepted before the investors' bankers would consider endorsing the purchase of Bunker Hill.

The investors stated from the outset, they were not in the position to negotiate with the Union in any manner and the Union would have to accept the responsibility of accepting or rejecting the wage-reduction package.

***January 15, 1982: Mr. Hagadone was back on the radio answering questions.

***January 16, 1982: The union leadership called a meeting

TO EVALUATE AND DISCUSS THE PROPOSAL. PRESENT AT THIS MEETING WERE REPRESENTATIVES OF THE UNITED STEELWORKER'S OF AMERICA UNION FROM PITTSBURGH AND LOS ANGELES. IT WAS QUITE APPARENT FROM THE BEGINNING, THE UNION LEADERSHIP DID NOT WANT THIS AGREEMENT RATIFIED AND LOBBYED LONG AND HARD TO HAVE THE LOCAL MEMBERSHIP VOTE AGAINST THE PROPOSAL.

FOLLOWING THE RECEIPT OF THE PROPOSAL, STEELWORKER'S OFFICIALS FIRST ANNOUNCED THAT THE PROPOSED AGREEMENT WOULD NOT BE ACCEPTABLE TO THEM AND EXPRESSED DOUBT AS TO WHETHER THE AGREEMENT WOULD EVEN BE SUBMITTED TO A VOTE OF THE UNION MEMBERS. AFTER A RATHER THOROUGH AIRING OF THE VIEWS OF BOTH THE UNION LEADERSHIP AND THE PURCHASING GROUP, THE LEADERSHIP ANNOUNCED THAT IT WOULD PUT THE MATTER TO A VOTE OF ITS MEMBERS ON JANUARY 17, 1982.

***JANUARY 17, 1982: THE VOTE WAS TAKEN BY SECRET BALLOT. SOME BALLOTS CONTAINED A DISCLAIMER STATING THIS WOULD BE AN ADVISORY VOTE. THE UNION LEADERSHIP DID NOT MAKE THIS FACT KNOWN TO THE UNION MEMBERHSIP AND FEW, IF ANY, WERE UNDER THE IMPRESSION THAT THE VOTE TAKEN ON SUNDAY, JANUARY 17, WOULD BE ANYTHING LESS THAN THE APPROVAL OR DISAPPROVAL OF THE AGREEMENT.

THE VOTES WERE TALLIED THREE TIMES: 696 MEMBERS VOTED FOR ACCEPTANCE OR THE PROPOSAL AND 505 VOTED AGAINST. IMMEDIATELY FOLLOWING THE FAVORABLE VOTE, THE OFFICERS AND EXECUTIVE COMMITTEE OF THE STEELWORKER'S LOCAL ALL RESIGNED THEIR OFFICES.

What took place Sunday evening after the vote, I believe, was clearly planned and in total disregard for the majority who voted to accept the wage agreement. Since the Executive Leadership of #7854 resigned en masse, the local union then reverted to the trusteeship of the United Steelworker's of America Union in Pittsburgh.

***January 18, 1982: National Representatives of the Steelworker's of America announced publicly that they would not sign the agreement as approved by the membership and that the vote taken on January 17, was merely advisory. In addition, the national union filed official documents with the Department of Labor to place local Union #7854 under Administratorship and to appoint Mr. Lavern Melton as Administrator over the affairs of the local union. The Administrator then reappointed most of the officers who had previously resigned.

***January 18, 1982: The rank and file of the local union, who felt abandoned by the national union's actions, called for a meeting to discuss the actions of the leadership. The membership then circulated a petition calling for the leadership to honor the vote and sign the agreement.

***January 19, 1982: A group of workers, frustrated with the efforts of the national representatives of the Steelworker's union who were attempting to block the signing of the agreement, met and elected new officers for the local union. The newly elected President, Ron Byrd, who had voted against accepting the wage agreement, felt the majority of union members had spoken through the election and the national union should recognize their vote.

***January 19, 1982: On Tuesday,

the newly elected leadership of the local union signed the agreement.

***January 20, 1982: Because the national union was unwilling to accept the proposed agreement ratified by the local union and the actions of the national and local unions following the vote left many legal uncertainties, the purchasing group abandoned their efforts to acquire the Bunker Hill assets.

***January 20, 1982: Congressman Larry Craig-(R), First District of Idaho, met with Mr. Petris, United Steelworker's of America Regional Representative for District 38, and Mr. McKee, the National Secretary from Pittsburgh. No progress was made during the two hours of talks.

***January 21, 1982: A class-action suit on behalf of the local members was filed in the United States District Court of Idaho against the United Steelworker's of America seeking to enjoin it from interferring with the local union's approval of the agreement.

***FEBRUARY 2, 1982: CONGRESSMAN LARRY CRAIG AND I TRAVELED TO PITTSBURGH IN AN ATTEMPT TO CONVINCE THE NATIONAL UNION TO HONOR THE VOTE TAKEN ON JANUARY 17. THE NATIONAL UNION LEADERSHIP DID NOT WANT TO DISCUSS THE VOTE BECAUSE THEY CONTINUED TO SAY THE VOTE WAS ONLY ADVISORY IN NATURE AND NOT BINDING. WE ALSO DISCUSSED THE ACTION BY THE LOCAL UNION OFFICIALS AND THE TRUSTEE ASSUMPTION ISSUE. THIS PROCEDURE SEEMED TO BE PLANNED AS A RESPONSE TO THE POSSIBLE APPROVAL OF THE WAGE PACKAGE PRESENTED BY THE INVESTOR GROUP. ONCE THE LOCAL UNION REVERTED INTO TRUSTEESHIP, THE RANK AND FILE MEMBERS WERE HELPLESS TO ACCOMPLISH ANYTHING OF REAL SUBSTANCE ON THEIR OWN BEHALF.

WE LEFT PITTSBURGH WITH A FEELING OF HELPLESSNESS AND FRUSTRATION. THE STEELWORKER'S NATIONAL LEADERSHIP WAS NOT CONCERNED WITH JOBS, BUT WITH THEIR OWN STATURE AND ABILITY TO NEGOTIATE FUTURE CONTRACTS.

***FEBRUARY 3, 1982. MR. PETRIS, THE STEELWORKER'S REGIONAL REPRESENTATIVE, CALLED BY PHONE TO EXPRESS HIS CONCERN OVER WHAT CONGRESSMAN CRAIG AND I MIGHT DO AS OUR NEXT STEP. OUR SUGGESTION WAS VERY SIMPLE--GET THE NEGOTIATIONS GOING AGAIN BY CALLING THE INVESTOR GROUP. HE DID AND REPRESENTATIVES OF THE UNION AND THE INVESTOR GROUP STARTED A NEW ROUND OF DISCUSSIONS. THE NEGOTIATIONS CONTINUED THROUGHOUT THE WEEK AND STOPPED ON FEBRUARY 12.

A news conference to announce new developments was scheduled for February 13, but any new arrangements failed to materialize.

***February 18, 1982: The Governor of Idaho voted "Right to Work" legislation. The legislation was referred back to the Idaho House where the veto was overridden. However, the override failed in the Idaho Senate by 3 votes. With the failure of any "Right to Work" legislation, the union broke off all negotiations and Mr. Petris left Spokane, Washington and the Silver Valley for Los Angeles.

***March 1982. The sintering plant was sold by Gulf and no new attempts to purchase the Bunker Hill Minning Company emerged.

***In the days and weeks that followed the purchase group's final action, various community and political leaders, including Senator McClure-(R)-Idaho, Congressman Craig, and myself, had numerous discussions with national representatives of the Steelworker's in an attempt to resolve the matter.

From these meetings, it became quite obvious that the Steelworker's position was based upon its belief that accepting the proposal of the investor group would establish adverse precedent for its dealings with other employers. The national union was more interested in what it saw as a precedent than 1,500 direct jobs for union members in Northern Idaho.

Sadly, the local union member was fighting the United Steelworker's of America and their large legal staff in Pittsburgh for the right to work in a small community in Idaho.

***During the next eight months, several individuals and companies attempted to purchase Bunker Hill from Gulf. However, negotiations seemed to come to a standstill once the unions became involved.

***November 6, 1982: Finally, after the union contracts had expired and the Bunker Hill facility was completely closed, Duane Hagadone, Harry Magnuson, Jack Kendirck, and J.R. Simplot purchased the minning operation.

***September 18, 1984: Bunker Hill, through the Cressent mine which is the only facility operating, employes 72 non union workers--a far cry from three years ago when 2100 workers supported their families and the Silver Valley of Idaho.

Mr. Chairman, I have gathered a set of newspaper articles from Northern Idaho and across the country, including the Washington Post and the Wall Street Journal, which recounts this sad saga in American labor/management relations. I would ask that these articles be made part of the official record.

In addition, Mr. Chairman, I have acquired a variety of

EXHIBITS, INCLUDING PRESS RELEASES FROM CONGRESSMAN CRAIG, A LETTER REPORT FROM THE UNITED STEELWORKERS OF AMERICA UNION ON THE FINANCIAL STATUS OF BUNKER HILL PRIOR TO ITS CLOSING, A MEMO FROM PIATT HULL, ATTORNEY FOR THE LOCAL UNION MEMBERS, TO RON BYRD AND EMPLOYEES OF BUNKER HILL, AND CORRESPONDENCE BETWEEN MR. LLOYD MCBRIDE, PRESIDENT OF THE UNITED STEELWORKERS OF AMERICA UNION AND THE DEPARTMENT OF LABOR. I WOULD ASK THAT THIS INFORMATION ALSO BE MADE PART OF THE RECORD OF THIS COMMITTEE'S HEARING.

Not only should we think of the personal tragedy of this event, but the impact on the entire geographic area. I want to touch briefly on the economic impact on income, unemployment, mineral production, and tax revenue:

I. Impacts on Idaho:
   Annual income dropped $55 million
   This $55 million represent 1.3% of all salaries

II. Impacts on the Area:
   Secondary--$30 million

III. Employment loss:
   2100 employees of Bunker HIll of Kellog
   200-5000 support employees within the State
   1000 Secondary employees throughout the rest of the country

IV. Tax Revenue loss:
   Idaho annual tax loss of $8.5 million
   Tax loss from closure--$9 million-Federal Income Tax
   $1 million State Income Tax
   $1.6 million in property tax
   $160,000 Mine License Taxes
   $136,000 in Sales Taxes
   Total revenue loss to all Governments--$11.9 million

V. Impacts 41 industries nationwide, reducing employment by 5,761 people and sales by $569 million

MR. CHAIRMAN, IT IS HARD TO LOOK AT THIS SITUATION OBJECTIVELY AND SAY THAT THE STEELWORKERS OF PITTSBURGH HAD ANYTHING TO LOSE BY ALLOWING WORKERS IN IDAHO TO KEEP THEIR JOBS. THE ONLY RATIONALE FOR A WAGE REDUCTION WAS TO MAKE BUNKER HILL A FEASIBLE ECONOMIC UNIT AGAIN. AS THE JANUARY 17, 1982 VOTE ATTESTS, FEW BELIEVED IT WAS AN ATTEMPT BY MANAGEMENT TO EXPLOIT THE SITUATION. BOTH CAPITALISTS AND WORKERS WERE STRUGGLING TO PRESERVE A DYING INDUSTRY. THE LAST THING THEY NEEDED WAS INTERFERENCE, OBSTRUCTION, AND FEAR FROM PITTSBURGH.

ONCE AGAIN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOUR COMMITTEE, SENATOR NICKLES. I WOULD BE PLEASED TO ANSWER ANY QUESTIONS.

(NOTE: Following is additional documents supplied for the record by Senator Symms. However, due to printing limitations and in the interest of economy, certain other material supplied was retained in the files of the Committee, where it may be researched upon request.)

Phone (412) 562-2400

United Steelworkers of America
AFL-CIO-CLC
FIVE GATEWAY CENTER, PITTSBURGH, PA. 15222

July 31, 1981

Mr. Bill Thompson
Sub-District Director
District 38, USWA
1522 N. Washington Street
Spokane, Washington 99201

Dear Bill:

As requested, we have made a complete review of the financial records of the Bunker Hill subsidiary of Gulf Resources & Chemical. The analysis is based on data received from the Company at meetings on June 29 and June 30. The Company has been very cooperative and has made available all the data needed for a complete analysis.

During the June 29 and 30 meetings we had extensive discussions with the Company on its accounting methods. The Company was responsive to each of our questions. In addition, I have spent some time studying the accounting methods used in the data supplied by the Company. The methods used by the Company are in accordance with normal accounting procedures and I have no doubts as to their authenticity.

The Bunker Hill Company is a wholly-owned subsidiary of Gulf Resources & Chemical. It is a major part of Gulf Resources operations. About 2,000 of the 5,000 employees at Gulf Resources are employed at Bunker Hill. In 1980 over 50% of Gulf Resources Sales and Net Profits and 40% of Gulf Resources identifiable Assets were from the Bunker Hill operation. In addition to Bunker Hill, Gulf Resources owns companies that are active in the coal, lithium, industrial explosives, oil and gas and the specialty clays industries.

OPERATING PERFORMANCE

Sales and Net Profits (after taxes) for Bunker Hill for the last several years are found in the table below. Bunker Hill is a major producer of lead, zinc and silver. Its profit performance depends greatly on the volume of products shipped and on the price of the major products. Sales

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of the three metals, as a part of total Bunker Hill Sales, for the last five years, have averaged as follows:

Silver -- 27.5%
Lead — 27.0%
Zinc -- 34.4%

Clearly, price fluctuations of each metal strongly affect Revenues and Profits Appropriate price data are included in the table.

	TOTAL REVENUES (SALES)	NET PROFITS	METAL PRICES		
			LEAD (per lb.)	ZINC (per lb.)	SILVER (per tr. oz.)
Current Prices a/			42.0¢	46.2¢	$ 8.50
5 mos. 1981	$107,146,155	$- 4,057,815(L)	34.6	42.3	12.48
1980	337,860,000	17,460,329	42.3	37.4	20.63
1979	228,938,000	7,796,896	52.6	37.3	11.09
1978	158,204,000	- 922,944(L)	33.7	31.0	5.40
1977	130,199,880	- 1,007,017(L)	30.7	34.4	4.62
1976	140,401,787	5,629,802	23.1	37.0	4.35

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a/ Prices as of July 30, 1981
(L) Loss

The Bunker Hill Company had Net Profits of $5.6 million in 1976. A strike occurred in 1977 and the Company had a Loss of $1.0 million. This was followed by another Loss year in 1978. The Company made a strong recovery in 1979, earning Net Profits of $7.8 million. The Company's performance in this year was helped by increases in the price of lead, zinc, and particularly of silver, which doubled in price from 1978.

1980 was an excellent year for the Company with both Profits and Sales up considerably from 1979. Net Profits reached a level of $17.5 million in 1980. The good 1980 record can largely be attributed to silver operations. The sales of silver were high in 1980 and the average price of silver during the year was a very strong $20.63 per oz. The price of silver fluctuated widely during the year. It was as high as $44.93 per oz. in the week of January 18, dropped to $11.50 in May, increased again to $20 in October, and dropped again to $16 at the end of the year. Much of the wild swings in the price of silver and the excellent average for the year can be attributed to speculation in the silver market.

The excellent performance in silver hid less successful operations in lead and zinc. A major end market for both lead and zinc is the automotive industry. The automotive industry had a bad year in 1980 and the consumption of both lead and zinc in the United States was down sharply. The average lead price of 42.3¢ in 1980 was 10¢ per lb. less than in 1979. The price of zinc held steady in 1980 but the Company had trouble purchasing sufficient amounts of zinc concentrates and the zinc plant was closed for part of the year.

The most important period for this analysis is the operations of the Company in the first 5 months of 1981 (January through May). During this five-month period the Company had a Loss of $4.1 million. The Company had a small Profit in January but had Losses in each succeeding month. A major reason for this sharp turnaround from 1980 has been rapid decreases in the price of silver. Silver averaged $12.48 per oz. in the first 5 months of 1981 vs. the average of $20.63 in 1980. Much of this decrease can be attributed to silver speculation, just as the 1980 upsurge was from speculation. In addition, silver sales are down from the high 1980 levels.

The price of lead was also down sharply in early 1981. Lead prices averaged 34.6¢ in the first 5 months of 1981, down about 8¢ per lb. from the 1980 average. Zinc prices in the first 5 months of 1981 averaged 42.3¢ per lb., up from 37.4¢ in 1980. However, the Company is still experiencing difficulties in purchasing sufficient amounts of zinc concentrates and this has hindered operations in this area. The combination of lower lead and silver prices and a shortage of zinc concentrates led to the poor performance in the first 5 months of 1981.

There have been some price developments since May. The price of lead is now about 42¢ per lb., up from the 34.6¢ average in the first 5 months of the year. A 3-month strike at the St. Joseph Lead properties in Missouri, and a strike at AMAX Lead in Missouri which started June 1 and is still continuing, contributed to the price increase. More basic have been signs of a pickup in demand from battery manufacturers, the largest market for lead products. The price of zinc is now 46.3¢ per lb., up from 42.3¢ in the first 5 months of 1981, but there is still a concentrate shortage. The increase in lead and zinc prices should help the Company's operation. However, silver has remained at a very low level and is fluctuating between $8.00 and $9.00 per oz.

In its latest official forecast the Company projected an Operating Loss (they do not forecast Net Profits) of about $20.8 million for the complete year. In our meetings they orally stated that with silver prices at the current low levels ($8.00 to $9.00), the expected Operating Loss would be greater at about $30 million. This forecast, however, was made before the increase in the price of lead and zinc so the forecast might now be more favorable. While the forecast made by the Company is pertinent, a great deal of emphasis cannot be given to projected figures. Business conditions, particularly the price of the basic metals, can change suddenly and negate the validity of even the best forecast.

CAPITAL SPENDING

One concern with conglomerate ownership is that the conglomerate may be draining large amounts of Profits from its subsidiary without making the investments in new plant and equipment needed for the subsidiary to remain competitive. This has not been the case at Bunker Hill, as improvements have been made in plant and equipment. One valid way to analyze capital spending is to compare it with cash flow from operations, which consists of net profits and depreciation. The pertinent figures are found in the following table:

CASH FLOW ANALYSIS

	NET INCOME	DEPRECIATION	TOTAL CASH FLOW	CAPITAL SPENDING
1st 5 mos. 1981	$- 4,057,815(L)	$ 1,989,451	$- 2,068,364 (L)	$ 4,434,032
1980	17,460,329	4,449,855	21,910,184	6,866,448
1979	7,796,896	4,233,618	12,030,514	4,124,072
1978	- 922,944(L)	4,340,436	3,417,492	5,019,368
1977	- 1,007,017(L)	3,600,504	2,593,487	10,032,798
1976	5,629,802	2,982,106	8,611,908	11,194,730
TOTALS	$ 24,899,251	$21,595,970	$ 46,495,221	$41,671,448

(L) Loss

In the 5 years and 5 months since 1976, the Company has spent $41.7 million on improvements in plant and equipment. The heaviest spending levels were in 1976 and 1977 when Capital Expenditures were over $10 million per year. Capital spending declined in 1978, 1979, and was up some in 1980. The Company projects capital spending at $10.6 million in 1981. The spending of $4.4 million in the first 5 months of 1981 indicates this is a realistic projection.

During this same period, total Cash Flow from operations totaled $46.5 million with $24.9 million coming from Net Income and $21.6 million from Depreciation. The total Cash Flow amount of $46.5 million is somewhat larger than the $41.7 million spent on the improvement of plant and equipment. Nevertheless, this analysis does indicate that the Company has been spending considerable funds on the improvement of the plant facilities at Bunker Hill.

FINANCIAL CONDITION

An analysis of the Company's Balance Sheet indicates that it is not now having serious financial problems. One key financial measure is the ratio of Current Assets to Current Liabilities. Current Assets include Cash, Accounts Receivable and Inventories and represent the resources the Company has on hand to pay its bills. Current Liabilities include Accounts Payable, Interest Due and other bills the Company must pay. A current ratio of 2 to 1 is considered to indicate a sound financial condition. The ratio at Bunker Hill was 2.6 to 1 on 12/31/80 and increased somewhat to 3.1 to 1 on 5/31/81.

Another key financial measure is the quick ratio. As inventories cannot be immediately turned into cash the quick ratio deducts inventories from Current Assets and compares the results with Current Liabilities. A sound quick ratio is 1 to 1. At Bunker Hill the quick ratio on both 12/31/80 and 5/31/81 was an adequate 1.7 to 1.

As Bunker Hill is a wholly-owned subsidiary of Gulf Resources, a great emphasis should not be placed on the financial condition of Bunker Hill. The financial strength of Bunker Hill rests ultimately on the financial strength of Gulf Resources. Nevertheless, both the current ratio and quick ratio analysis indicates Bunker Hill has maintained a sound financial position.

LABOR COSTS AS PERCENT OF SALES

As a Union, we are vitally interested in labor costs, as this is where our wages and salaries impact a Company's operations. One way to analyze labor costs is to compare total labor costs with sales. When labor costs are increasing in proportion to sales, it indicates that the company is having a problem in the labor area. The following table compares bargaining unit labor costs, including both wages and fringe benefits, and management labor costs, including wages and benefits with net sales.

	NET SALES	BARGAINING UNIT LABOR COSTS	BARGAINING UNIT AS % OF SALES	MANAGEMENT LABOR COSTS	MANAGEMENT LABOR AS % OF SALES
5 mos. 1981	$105,792,288	$20,724,995	19.6%	$ 6,668,964	6.3%
1980	335,138,219	43,593,724	13.0	12,721,730	3.8
1979	224,640,039	36,555,923	16.3	11,000,311	4.9
1978	156,771,498	30,839,917	19.7	9,453,438	6.0
1977	129,459,469	17,922,920	13.8	10,171,421	7.9
1976	139,635,407	24,483,385	17.5	8,092,331	5.8

In the Profit year 1976 bargaining unit labor costs totaled $24.5 million and represented 17.5% of Sales. This ratio declined to 13.8% because of a strike in 1977. It then increased to 19.7% of Sales in the Loss year of 1978. Labor costs then decreased to 16.3% of Sales in 1979 and 13.0% of Sales in 1980. The major reason for this decline appears to be substantial sales increases caused by the higher metal prices. In the first 5 months of 1981 bargaining unit labor costs increased to 19.6% of Sales. This is about equal to the 19.7% of 1978 and about 2% above the 1976 ratio. This indicates that there has been some upward creep in labor costs in the first 5 months of 1981, but the ratio is not at an alarmingly high level.

Management labor costs have followed much the same trend as the bargaining unit costs except for 1977 when bargaining unit costs were held down by the strike. The figures do not indicate that the Company is treating its management employees more favorably than the Union employees. Total labor costs for the bargaining unit employees increased by 78.1% from 1976 to 1980. During the same period labor costs for management personnel increased at a slower rate of 57.2%.

COMPETITIVE EARNINGS

Another way of judging a company's labor costs situation is by comparing its wages and fringes with those of its competitors in the same industry. A comparison of apparent average hourly earnings for Bunker Hill and its major competitors based on Steelworker dues records follows:

AVERAGE HOURLY EARNINGS

			1st Qtr. 1981	
COMPANY	L.U.	LOCATION	EMPLS.	AVERAGE HOURLY EARNINGS
Bunker Hill	7854	Kellogg, Idaho	1,471	$10.71
Lead and Zinc Mines				
Kennecott-Ozark Lead	994	Missouri	291	11.43
St. Joseph Minerals	6242	Missouri	639	10.51
AMAX Lead	7447	Missouri	682	10.49
Kennecott-Tintic Div.	4260	Utah	81	9.82
Silver Mines				
ASARCO-Galena	18	Idaho	167	11.76
Sunshine Mining Co.	5089	Idaho	476	12.55
Hecla Mining Co. Lucky Friday Mines	5114	Idaho	281	9.72
Lead Smelting & Refining				
ASARCO	461	Omaha, Neb.	206	10.45
ASARCO	7450	Glover, Mo.	127	10.25
ASARCO	72	East Helena, Mont.	275	10.46
Zinc Smelting & Refining				
ASARCO	5022	Corpus Christi, Tex.	396	9.93
AVERAGES				
Steelworker Average for Total Lead, Zinc, Silver				9.987
Average for 9 Competitors Listed Above				10.749

The average hourly earnings at Bunker Hill in the first quarter of 1981 were $10.71. The Bunker Hill Local includes both mines and smelters. Most of the competing companies are usually either a mine or a smelter. As mining rates are usually high, especially when gypo miners are employed, the comparison between Bunker Hill and the competitors is somewhat difficult. In addition, at Bunker Hill dues are paid on the basis of 1.15% of average earnings, rather than on the standard two-hour basis. We are not sure about the dues basis for the other Locals.

The Bunker Hill average earnings of $10.71 are higher than the average earnings in lead and zinc mines at St. Joseph's Minerals and AMAX Lead; but the differences are not great. At the Ozark Lead property of Kennecott the average earnings of $11.43 are higher than the rate at Bunker Hill, while the average at the Kennecott Tintic Division is lower.

The average hourly earnings at Bunker Hill are lower than the rates of the ASARCO Galena and Sunshine silver mines in Idaho. However, the inclusion of the lower-paid smelter workers in the Bunker Hill average may distort this comparison. The average at Bunker Hill is higher than the average earnings at the Lucky Friday Mines.

The key competitors for Bunker Hill in the lead and zinc smelting industry are part of the ASARCO chain. The average rate at Bunker Hill is above the rates at the ASARCO smelters and refineries in Omaha, Neb.; Glover, Mo.; East Helena, Mont.; and Corpus Christi, Tex. The differences are not great and the inclusion of the higher-paid gypo miners in the Bunker Hill average may distort this comparison.

A look at the straight time rates, including COLA, in the smelting agreements shows that the Bunker Hill rates are not excessively high.

COMPANY	MINIMUM RATE	TOP RATE	CRAFT RATE
Bunker Hill	$8.96	$10.36*	$11.37
ASARCO - E. Helena	9.68	11.24	11.24
ASARCO - Corpus Christi	9.82	11.759	11.56
ASARCO - Omaha	9.53	11.51	11.323
ASARCO - Glover	8.22	10.59	N.A.

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* Highest rate in regular wage schedule. The crafts have a wage rate schedule.

N.A. Not Available

The above table shows that the contract rates at Bunker Hill are lower than the ASARCO rates at Omaha, Corpus Christi and E. Helena and above the Glover rates at the bottom of the rate range and higher than the Glover rates at the top of the scale. The craft rates in the ASARCO chain and at Bunker Hill are at comparable levels.

Another way of comparing the average hourly earnings at Bunker Hill with ASARCO is to combine ASARCO's Galena Mine and East Helena smelter which would result in an operation similar to that of Bunker Hill. The average hourly rate for the combination of ASARCO's Galena Mine and E. Helena property is $10.95 which is 24¢ above the $10.71 rate at Bunker Hill.

The average hourly earnings for all Steelworker-represented employees in the lead, zinc and silver industry in the United States are $9.987, which is below the $10.71 rate at Bunker Hill. However, this average includes many smaller Eastern operations which are not direct competitors of Bunker Hill. The average rate for the 9 major competitors listed on the preceding table is $10.749 which is just about equal to the $10.71 rate at Bunker Hill.

On balance the Bunker Hill rates do not appear to be excessive when compared with the rates of its main competitors. Because of the difficulties in comparing the combined smelter and mine unit with other Steelworker units, this comparison is not perfect; but all the available evidence indicates that Bunker Hills' rates, while on a par with most of the industry, are not excessive.

FRINGE COSTS

As total labor cost figures for Bunker Hill's competitors are not available, the best way to compare fringes is on a benefit basis. The table on the following page compares major fringe benefits.

Bunker Hill has 11 paid holidays which is better than the 10 holidays paid by most of its competitors (9 at ASARCO).

The regular vacation provisions in these agreements are complex and difficult to analyze. This table summarizes days of vacation pay rather than time off as this is more directly related to costs. Sunshine and Hecla have better vacations for junior employees (1 through 10 years) than does Bunker Hill and comparable vacations for senior employees and on balance have superior vacation plans. The Bunker Hill vacation provisions are clearly better than the Kennecott (Ozark and Tintic) and ASARCO provisions, with the most noticeable differences being senior employees with 10 or more years of service.

The shift differentials at Bunker Hill are equal to or better than most in the industry, with the exception of ASARCO, which has higher rates.

The Bunker Hill insurance and pensions provisions compare favorably with most of its competitors. The exception is ASARCO which has slightly higher pensions, life insurance and retiree life insurance amounts. The absence of retirees' life insurance in the Bunker Hill agreement is a weakness in comparison with Hecla and Sunshine Mines. However, the basic pension amount, along with life insurance benefits for active employees and S&A benefits (amount and duration), are higher at Bunker Hill than Sunshine and Hecla and the Ozark Lead and Tintic Divisions of Kennecott.

The major fringe benefit comparisons show that Bunker Hill and all of its competitors have good fringe benefits. Bunker Hill's total program is clearly superior to the Ozark Lead and Tintic Divisions of Kennecott. Some of Bunker Hill's benefits are better than the comparable amounts at ASARCO, Sunshine and Hecla; in other areas it trails these 3 competitors. On balance, the benefits at Bunker Hill, ASARCO, Sunshine are at comparable levels.

Summary of Major Fringe Benefits
for Lead, Zinc, Silver Agreements a/

	Bunker Hill	Kennecott		Sunshine	Hecla	ASARCO
		Ozark	Tintic		Lucky Friday	Galena Corpus Christi E. Helena Omaha
olidays	11.0	10.0	10.0	10.0	10.0	9.0
acations		(Days Paid at Specified Years)				
Yrs. of Service						
1	5	5	5	13	13	5
3	12	10	10	18	18	10
5	12	15	10	23	23	10
10	22	15	15	26	26	15
17	26	20	20	28	26	20
20	30	20	20	31	26	20
25	34	20	20	34	28	25
30	36	20	20	34	31	25
hifts						
2nd	24¢	24¢	15¢	18¢	18¢	30¢
3rd	36¢	28¢	25¢	28¢	28¢	45¢
nsurance						
Life Insurance	$17,000	$15,600-17,600	$12,000	$11,500	$ 7,500-13,500	$18,000
Retirees' Life	--	—	--	6,000	3,000	3,500
S&A Benefits						
Duration (Wks.)	39	26	26	26	26	39
Amount	$140-200	$110	$135	$130	$141	$170
Eye Care	Yes	No	Yes	Yes	No	Yes
Dental Plan	Yes	Yes	Yes	Yes	Yes	Yes
ension						
Amount Per Yr. of Service	$16.50	$16.00	$13.00	$13.50	$13.00	$16.50 (1st 15 Yr 18.00 (15-30 Yrs 19.50 (Over 30 Yr
OLA						
1¢ for .3	Yes	Yes	Yes	Yes	Yes	Yes

/ AMAX Lead is now on strike. St. Joseph Minerals recently settled an agreement after a 3-month strike. Current data on these companies are not available.

SUMMARY

Bunker Hill entered into a difficult period in 1981 and operated with a substantial Loss in the first 5 months of the year. This Loss period followed excellent Profit years in 1979 and particularly in 1980. The major difference between 1980 and the early part of 1981 is the price of silver which averaged $20.63 per oz. in 1980, $12.48 in the first 5 months of 1981 and is now in the $8.00 to $9.00 range. In addition, a lack of zinc concentrate has led to low operations in the zinc area.

There have been some favorable developments in the last two months. The price of lead and zinc has increased substantially and market conditions for these products (especially lead) have improved. These developments should help the Company; however, the very low silver price is still a major problem.

The analysis of average hourly earnings and fringe costs indicates that Bunker Hill's provisions are on a par with most of its competitors. They are not excessively high. The analysis of bargaining unit costs as a percent of Sales indicates some rise in the ratio in 1981, but it was not a major increase.

Profits at mining companies have traditionally followed a boom and bust cycle with strong profits in years with good market conditions and high prices, and very low profits in the bust period. Bunker Hill has had Loss year periods in the past, but not as severe as this year's projected losses. Because of last year's speculative boom in silver prices, the opposite occurred -- profits were unusually high.

Bunker Hill's major problems in the first part of 1981 have been low silver prices and a lack of zinc concentrates. These are not labor-related items and a reduction in benefits would not solve these basic problems. Total bargaining unit labor costs in 1981 are likely to be around $55 million. A modest deferral or decrease in benefits would make only a small dent in the Company's projected Losses of $20 to $30 million in 1981, although it might serve as a gesture of sincerity by the Union and its members.

We cannot, of course, make any recommendation at this point because the Company has made no specific proposal.

Sincerely,

Edward Ghearing
Assistant Research Director

EG:hb
Enclosure
cc: Robert J. Petris, Director

P.S. I have enclosed a copy of Bunker Hill's latest pension report.

COEUR d'ALENE (ID) PRESS
January 16, 1982

Bunker Hill workers mull big decision

By RIC CLARKE
Press Staff Writer

KELLOGG — The fate of the dying Bunker Hill Co. tonight will be decided in the privacy of 1,800 area homes.

It is there that Bunker Hill's rank-and-file union employees must answer with their families the difficult question of loyalty asked today at a union membership meeting here.

They must decide whether to side with the union or to keep their jobs.

Should the members of Bunker Hill's seven craft unions faithfully respond to the wishes of their unions in a Sunday vote and reject a labor concession proposal, Bunker Hill will close.

If they vote to accept the reduced wages and benefits offered by a team of potential Bunker Hill buyers, most employees can continue living and working in the Silver Valley.

The investor group must have a pro-concession answer from the union Sunday in order to seal the Bunker purchase by next Friday's deadline.

Today's 10 a.m. meeting in the Kellogg Junior High School gymnasuium attracted more than 500 union members and wives, but was closed to the press.

The purpose of the standing-room-only meeting was to present formally the investors' proposal to the union membership. The union leadership Wednesday promised the investment team it would recommend its members reject the offer.

United Steelworkers Union official Bill Thompson of Spokane gathered reporters from area newspapers and television stations minutes before the meeting to explain the closed-door policy.

Considering the implications of Sunday's vote, Thompson said, the meeting will be "a very volatile situation."

The veteran negotiations committee chairman said he was worried the presence of the press would intimidate union members, would keep them from speaking openly.

Though members' wives were permitted to attend the meeting, few came.

Thompson said it is not unusual for wives to be indirectly included in union business, but he admitted that today's meeting is the first in Kellogg history to allow wives.

"The wives have a great stake in what's going on," he said.

In a pre-meeting interview, Thompson said the meeting would focus on two issues — insurance and seniority concessions. He was to be assisted by steelworkers official Scott Spencer of Pittsburgh, Pa., in explaining those matters, he said.

Thompson claims that even if Bunker closes, its parent company — Gulf Resources and Chemical Corp. of Houston, Tex. — is required to honor its insurance agreements through August 1983.

He said Gulf agreed Friday to continue paying the benefits.

"The (present) contract affords layoff protection " Thompson said today.

Investor Duane B. Hagadone of Coeur d'Alene said the current contract's benefits will end if the company closes down.

One union employee attending today's meeting said the continuation of benefits is not the issue.

"The decision is, when Bunker Hill closes, where will people be able to go?" worker Jack Buckner of Kellogg said. "There's nothing left here."

Buckner admits he doesn't like the idea of making the proposed concessions, but he believes it is worth making a short-term sacrifice to save the community's economy.

Most of Kellogg's residents work at Bunker, the state's second-largest employer with 2,100 employees.

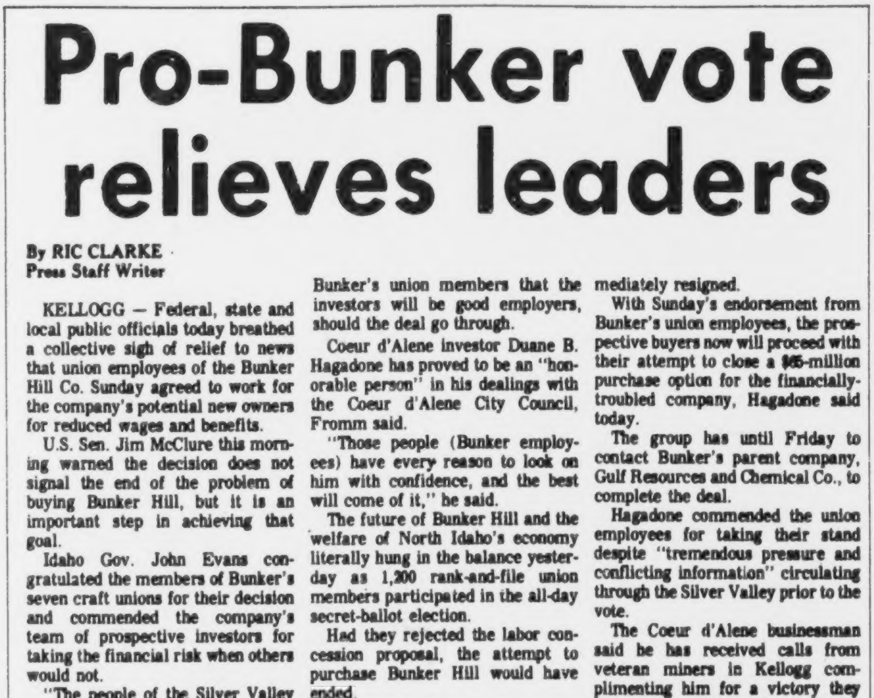
Buckner believes most of his working partners share his opinion and would be willing to vote against the union to save Bunker Hill.

During a telephone talk-show conducted Friday by Hagadone with Silver Valley residents on KWAL Radio in Osburn, most callers indicated they favored the investors' proposal.

The concession proposals ask for a 25 percent employee wage reduction this year, followed by graduated increases over the next four years.

It also proposes to reduce Bunker's working force and to cut benefits to a level comparable to those of most other industries in the state, Hagadone said.

COEUR d'ALENE (ID) PRESS
January 18, 1982



Pro-Bunker vote relieves leaders

By RIC CLARKE
Press Staff Writer

KELLOGG — Federal, state and local public officials today breathed a collective sigh of relief to news that union employees of the Bunker Hill Co. Sunday agreed to work for the company's potential new owners for reduced wages and benefits.

U.S. Sen. Jim McClure this morning warned the decision does not signal the end of the problem of buying Bunker Hill, but it is an important step in achieving that goal.

Idaho Gov. John Evans congratulated the members of Bunker's seven craft unions for their decision and commended the company's team of prospective investors for taking the financial risk when others would not.

"The people of the Silver Valley have given ample evidence that they 'can do' when the chips are down," Evans said this morning. "I am encouraged the purchase of Bunker Hill can now go forward and the employees can get back to work."

The mayors of Kellogg and Coeur d'Alene said the future economic well-being of their prospective communities was in the hands of Bunker's union members.

Kellogg Mayor Ford Hoback said the effect of Bunker's closure on his city would have the same impact as all of Coeur d'Alene's lumber mills and tourist-related businesses shutting down at once.

"We'd survive without (Bunker Hill), but we'd be a darn poor excuse here," he said.

Jim Fromm, as Coeur d'Alene's mayor and a teacher in the Kellogg School District, understands the economic implications Bunker's closing would have to both communities.

"It would have been a dead end," he said.

The new Coeur d'Alene mayor commended the investors for pursuing the purchase and assured Bunker's union members that the investors will be good employers, should the deal go through.

Coeur d'Alene investor Duane B. Hagadone has proved to be an "honorable person" in his dealings with the Coeur d'Alene City Council, Fromm said.

"Those people (Bunker employees) have every reason to look on him with confidence, and the best will come of it," he said.

The future of Bunker Hill and the welfare of North Idaho's economy literally hung in the balance yesterday as 1,200 rank-and-file union members participated in the all-day secret-ballot election.

Had they rejected the labor concession proposal, the attempt to purchase Bunker Hill would have ended.

But nearly 700 Bunker Hill employees broke ranks with their powerful unions and defected to the other side — to the cost-cutting campaign to save Bunker Hill and its 2,100 jobs.

Acting against the advice of their union leaders, the rank-and-file workers voted 695-506 to accept a new 5-year labor-concession contract from a group of prospective buyers of Bunker Hill.

Though little was said between union members as they filed into the union hall to vote, two examples of attempts to influence the voters could be seen.

"Hagadone lied. This is the no strike clause," read a message scrawled across a copy of one page from the proposed contract, and taped to the front door of the hall.

Another page from the contract was taped to the opposite door, with a message added accusing the investors of unfair tactics.

In response to the pro-concession vote, United Steelworkers Local 7854 president Ken Flatt and his entire 11-member exectutive board immediately resigned.

With Sunday's endorsement from Bunker's union employees, the prospective buyers now will proceed with their attempt to close a $65-million purchase option for the financially-troubled company, Hagadone said today.

The group has until Friday to contact Bunker's parent company, Gulf Resources and Chemical Co., to complete the deal.

Hagadone commended the union employees for taking their stand despite "tremendous pressure and conflicting information" circulating through the Silver Valley prior to the vote.

The Coeur d'Alene businessman said he has received calls from veteran miners in Kellogg complimenting him for a victory they desribe as "amazing" considering the influence of the unions.

"It's unbelievable," Hagadone said. "This is a great victory for all of us in northern Idaho."

Fellow-investor Harry Magnuson of Wallace also praised Bunker's employees for their good judgment.

"It shows the strong spirit and ability of the people in the mining area to make the right decsions," he said.

Also involved in the investor group are J.R. Simplot of Boise and William J. Pfeiffer.

Hagadone said there are still several key conditions to be met before Bunker is rescued.

Approval of the financing from the investors' banks, clarification of business-related liablities and the limitation of environmental regulations are obstacles yet to be overcome in the five days remaining, he said.

Sunday's vote of confidence was critical. Without a clear endorsement from the union members, the

(continued on back)

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banks would not consider fronting the money, Hagadone said.

Bunker's unions, representing about 1.800 workers, last night admitted the vote is a "loud and clear" mandate and asked that an official agreement be negotiated as soon as possible.

"The unions are prepared to face the economic realities and accept necessary adjustments which are justified," said Flatt.

Flatt explained the outcome as a successful effort by the investors to break up the unions.

"Mr. Hagadone scared everybody. He put their jobs up against all reality," Flatt said.

"It's a sad day for labor in this valley."

"It was a very effective move in union-busting," said a member of Flatt's defunct exectutive board.

"We have it on good authority that this contract is a right-to-work, union-busting agreement," he said. "There's no doubt about it."

None of the union officials from the Steelworkers head office in Pittsburgh, Pa, were present during Sunday's announcement. The national officials traveled to Coeur d'Alene last week to help local union officers deal with the concession agreement issue.

Union officials were not as upset with wage and benefit reductions proposed by the investors as by elements in the agreement calling for the elimination of seniority and reduction of organized labor's authority at Bunker Hill.

The contract seeks a 25 percent wage reduction this year with graduated increases during the next four years.

It also calls for a rollback in benefits to a level comparable to other industries in Idahc.

Gulf announced last August it would close Bunker Hill after a company study projected Bunker would lose $40 million this year.

THE IDAHO STATESMAN
Boise, Idaho
January 18, 1982

Bunker unions OK contract

KELLOGG (AP) — By a vote of 695 to 506, union workers at Bunker Hill Co. approved a contract proposal Sunday that may help keep the 94-year-old mining-smelting complex in operation.

An investor group proposed wage cuts of 25 percent and fringe benefit rollbacks as a way to cut operating losses at the Kellogg operation.

Sunday, union officials announced rank-and-file membership had approved the proposal after a day of secret balloting. The results were announced from the United Steelworkers union hall Sunday night. About 1,800 workers were eligible to vote.

Union officials announced the vote but otherwise declined comment. Coeur d'Alene businessman Duane Hagadone said it was a "historic day that could help reopen the Bunker Hill operation."

"I want to commend the employees for being able to sort out all the information they have received the last few days and come up with the right answer," he said.

Hagadone went on a local radio station Saturday and Sunday, urging union members to go against advice from union leaders and approve the contract.

Hagadone said he would take the agreement to bankers this morning in an effort to complete financing for the $65 million deal. He said the consortium must negotiate with Gulf Chemical and Resources Corp. on liabilities the new company would face.

He said there are environmental liabilities to be worked out.

"But this was the big hurdle," Hagadone said. "We couldn't have done it without this agreement."

The drama that could mean the life or death of this mining community in the Idaho panhandle began Aug. 25, when Gulf Chemical and Resources Corp., which owns Bunker Hill, announced it was getting out of the metals industry and would shut down its subsidiary in Kellogg.

An investor group, headed by Harry F. Magnuson of Wallace, Hagadone of Coeur d'Alene, J. William Pfeiffer of La Jolla, Calif., and lately the J.R. Simplot Co. of Boise, has been trying to buy the firm for more than $65 million. Officials said their intent hinged on acceptance of a contract offer to union personnel.

The investors have until Friday to buy Bunker Hill.

A day before the vote, talks between Hagadone and Ken Flatt, president of United Steelworkers Local 7854 and head of a coalition of unions involved in Bunker Hill, broke down. Flatt initiated the meeting to discuss certain parts of the contract offer.

Flatt blamed a misunderstanding by Hagadone. Hagadone blamed international representatives of the steelworkers union.

Hagadone said he came to the meeting in nearby Wallace under the mistaken impression that if investors moved on certain parts of the contract offer, signatures of the locals and internationals of Bunker Hill's seven unions were guaranteed.

"He asked me, 'If I move, can you guarantee the unions would sign?' " Flatt said. "I had said no, I could not guarantee that. I can't employee work force to be rehired. It requires a five-year-no-strike agreement and reduces union pay by 25 percent.

Even if the unions agree, there's reportedly one hurdle left: a major bank must be persuaded to finance the purchase and modernization of the smelter and refineries.

represent the other unions."

Hagadone acknowledged he was mistaken.

"I told him we could sit down and hammer out an agreement, even if it took all night. He said no. We took a shot, and it didn't work," Flatt said.

Before Sunday's union vote, Hagadone said:

"Sunday is the day of decision. The destiny of Bunker Hill and the valley is at stake on Sunday Jan. 17. If the union membership votes against a contract proposal, there will be no tomorrow."

The five-year proposal from the investors to the unions calls for 1,500 of Bunker Hill's former 2,100-

employee work force to be rehired. It requires a five-year-no-strike agreement and reduces union pay by 25 percent.

Even if the unions agree, there's reportedly one hurdle left: a major bank must be persuaded to finance the purchase and modernization of the smelter and refineries.

SPOKESMAN-REVIEW
Spokane, Washington
January 19, 1982

Foley commends workers for Bunker contract vote

By RICK BONINO
Spokesman Review

Bunker Hill workers' willingness to take a pay cut to keep the plant open shows "an enormous sense of responsibility and tough-mindedness under difficult circumstances," U.S. 5th District Rep. Tom Foley said Monday.

"I think when you come down to it, American workers are interested in doing their fair share for the survival of the American industrial base," the Spokane Democrat said at a news conference.

"You see examples of that in the Bunker Hill situation and in actions taken by the UAW (United Auto Workers union)."

Members of seven unions at the Kellogg, Idaho, mining and smelting complex voted Sunday to accept a new contract -- calling for an immediate 25 percent pay cut — as part of a plan to keep the plant open under new ownership.

Reports that Bunker Hill workers union leaders would not sign the agreements came after Foley spoke.

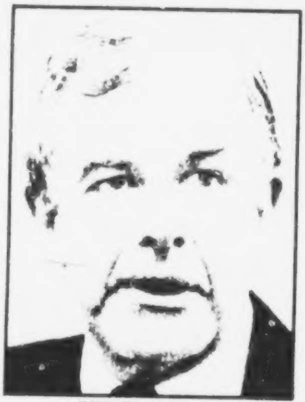
The Bunker vote parallels recent bargaining concessions by the UAW.

"I hope we develop more of a sense of trust and mutual interest (between labor and management) to see American industry go forward," Foley said.

"The third part of that is government. We need to maintain our obligations to the environment, health and safety and at the same time eliminate economically ineffective and expensive regulatory practices.

"I think we're seeing the beginning of that. Under the pressure of competition from other countries, the U.S. is maybe getting its act together and becoming more productive and efficient."

Foley's remarks came during a stopover on his return trip to Washington D.C. from Japan. The trip was financed privately through the Ford Foundation.



REP. TOM FOLEY
'Doing their fair share'

"The Japanese government is more closely associated with the success of industry than American business thinks the American government is," Foley said.

Ironically, he said, the Japanese tell him they learned their management principles from the United States.

They've applied those principles so well that Japanese business is booming — including an $18 billion trade surplus with the U.S.

"I told our Japanese friends that the mood of Congress is to take some action unless we see a better balance of trade between the U.S. and Japan," Foley said.

"I personally am very strongly opposed to trade restrictions. But realistically, I think Japan has to take stronger measures to prevent such actions."

Foley, former House Agriculture Committee chairman before moving into leadership as majority whip, said part of his mission was to encourage the Japanese to import more American agricultural products.

Japan is already the largest purchaser of U.S. crops overall, and ranked second last year in imports of Washington state wheat.

The island nation could use more beef and citrus fruits, Foley said, but Japanese leaders don't want to threaten native agriculture in those areas with more imports.

He said the Japanese have the lowest level of self-sufficiency for food of any industrialized nation.

"They plead for understanding in some areas where their agriculture is very sensitive," he said. "They say we protect our own agriculture, and there's some truth to that."

On other news conference topics, Foley said:

● Congress probably won't look at wage and price controls unless the economy suffers another round of "runaway inflation."

"The record isn't very good," he said. "The mood is, the medicine is worse than the disease."

● Congress will wait for results of an investigation into last week's Air Florida crash at National Airport in Washington D.C. before considering any action.

"We don't know yet if we'll get an assessment that it could have occurred at any airport," Foley said.

He said investigators should take a close look at how rescue services operated in the disaster.

SPOKESMAN-REVIEW
Spokane, Washington
January 19, 1982

Bunker Hill plan in jeopardy

By RTA HIBBARD
and LARRY YOUNG

KELLOGG, Idaho — Angry rank-and-file Bunker Hill Co. Steelworkers planned a petition drive late Monday evening to meet a new deadline of noon today to save their jobs.

Dissident union members, called — via calls to news media — for all members to come to union hall in Kellogg to sign a petition saying they are willing to to return to work. They plan to present a petition to investors today.

Earlier, about 200 Steelworkers filled the union hall here Monday afternoon to demand back control of their union, after international union leaders' refusal to approve an agreement threatened to doom rescue attempts by an outside investor's group.

A plan to rescue the nearly closed Bunker Hill Co. in Kellogg was within hours of collapse, a spokesman said Monday afternoon.

Newspaper publisher Duane B. Hagadone, his voice choking with emotion, announced to a broadcast news conference that union officials had failed to carry out terms of an agreement which had been approved by union members in a Sunday election.

The Steelworkers — who thought that Sunday they had approved a back-to-work contract that would reopen the smelter, said they were betrayed by union officials who claimed Monday that the vote was only "advisory."

About a dozen sheriff's deputies and police officers were called Monday to prevent an angry group of about 50 union members — locked out of the union hall by Steelworkers International officials from Pittsburgh — from breaking down the door of the hall.

The meeting began when the union officials inside allowed the men to enter.

In a meeting marked by hostile exchanges, about 200 steelworkers demanded to know why the 695-506 vote to approve the contract was declared advisory.

They told The Spokesman-Review that they had not received an answer to their question. Another meeting is scheduled for 9:30 a.m. today.

About 30 steel workers and their wives said Monday night that they planned to spend the night in the union hall for fear of being locked out again today.

"If we give up now, Pittsburgh owns this town," said Ron Bird, a two-year Bunker Hill employee and one of several union members who told The Spokesman-Review they had voted against the contract.

Bird and others who had voted against the contract said they believed that as in other union votes, the majority should rule.

"They are going to be drinking champagne in Pittsburgh and we're going to be here starving to death," Bird said.

"Maybe these people will buy this company. Maybe we can get off unemployment and go back to work like men."

A number of the union members gathered at Monday night's informal gripe session accused the union leadership of perpetrating "communism."

"We are here because they are saying the vote doesn't count," said an angry Francis Heck, who worked in the high line smelter.

"They said it was advisory. Well, they didn't tell us that when we voted.

"We've been fooled, stepped on, stomped on and lied to. And all they could talk about was how the union was being raped by this contract."

Heck said the Steelworkers attending Monday afternoon's meeting were told by Andy Coban, assistant to the vice president of the International Steelworkers Union in Pittsburgh, that the union is now in the hands of International officials.

Monday morning, Coban told The Spokesman-Review he had appointed Lavern Melton, business agent for the local, as administrator. He said Melton re-appointed Ken Flatt president and re-installed the executive board. Flatt and the board resigned Sunday night after the election approved the agreement.

Union members said Coban and local president Ken Flatt left the meeting suddenly at 5 p.m., saying they had been called to a meeting in Spokane.

Flatt held up a ballot with the words "advisory vote" printed on it, steelworkers said. But many told The Spokesman-Review that the ballots they cast did not bear those words.

"Our union is lying to us," said Art Conlee, a shop steward who worked in mine maintenance.

"We got kids and there's food missing off our tables," Heck said.

"We all were lead to believe this was a local union. I don't know what these International people are doing here."

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"This will go down in history as one of the saddest days in the Valley," said Mary Lou Wilbur, a 23-year Valley resident and wife of steelworker Bob Wilbur.,

"We found out that what we thought was here to protect us is what we need protecting against.

"I feel the only thing we can do is trust this new companay and feel grateful that these men are willing to invest their fortunes in an industry that looks like it is dying.

"We've all enjoyed the good times and now it's time to make sacrifices."

Hagadone said the agreement approved Sunday must be ratified by leaders of the Steelworkers local and seven other craft unions and signed copies of the agreement were due to be delivered by noon Monday.

HAGADONE SAID none of the agreements had arrived by late Monday afternoon.

Because the investment group has only until 5 p.m. Friday to exercise its option to buy Bunker Hill from Gulf Resources & Chemical Corp., and much remains to be done before that time, Hagadone said the delay in receiving the agreements is jeopardizing the whole plan.

He appealed to union members and those who voted for the contract Sunday to contact their union representatives to carry out terms of the agreement.

"It's unbelievable to me that the International Steelworkers could even think of taking the position they have taken," Hagadone said.

He said it appeared to him that "outside representatives are going to see that Bunker Hill remains closed. It's unbelievable to me that this can be allowed to happen.

"**THE ONLY CHANCE** for this thing to succeed would be if the 695 people (who voted in favor of the labor pacts) require the union leaders to sign these agreements and get them to his office as fast as possible," he said.

If that does not happen, Hagadone said, "I hope they (Steelworkers representatives) are here when this option expires to talk to you."

Hagadone read aloud a letter from Robert J. Petris, Steelworkers regional director, to Gerald Turnbow, Bunker Hill vice president, calling Sunday's vote only "advisory."

"That's the first I heard the term 'advisory used," he told reporters.

Hagadone said he was told by Coban, that the union was ready to meet "any time or any place to negotiate a contract."

"**THEY MUST NOT** have been listening to us," Hagadone said.

The contract offered for vote Sunday was on a take-it-or-leave-it basis and was not subject to any negoiation.

"We are not going to negotiate. I don't know how I can make it any clearer. There will be no negotiation and no extension," he said.

"I urge you union members who voted for the contract to ask your leaders for an explanation."

IN ADDITION TO ratifying the labor agreement, he said the investors needed time to notify their bank in Chicago of their plans, time for the bank to act, some clarification of company liabilities and agreement on environmental questions.

The investor group's hopes of taking over Bunker Hill had risen sharply Sunday night after their proposal was approved by a vote of 695 to 506.

BESIDES PUBLISHER Hagadone, the group consists of Wallace businessman Harry F. Magnuson, mining consultant William Pfeiffer of La Jolla, Calif., Idaho potato baron Jack Simplot of Boise, Sunshing Mining Co. and Coeur d'Alene Mines.

THE IDAHO STATESMAN
Boise, Idaho
January 19, 1982

Labor dispute may doom Bunker

By MARY KELTZ
The Idaho Statesman

A dispute between union leaders and prospective buyers of the Bunker Hill Co. could kill a proposal to save the Kellogg mining and smelter operation, a spokesman for the investors said Monday.

Coeur d'Alene Publisher Duane B. Hagadone said seven Bunker Hill unions failed to sign and deliver contract agreements that workers approved 695 to 506 in an advisory vote Sunday. He said the deadline for submitting the agreements was 1 p.m.

Hagadone said union leaders are misinforming the rank and file by saying the investors will negotiate a new agreement, if the current proposal is not adopted. Specifically, Hagadone blamed the United Steelworkers of America for jeopardizing the Bunker Hill rescue. The union represents 1,500 of 1,800 union workers at Bunker Hill.

Duane Hagadone

"You only have one opportunity and that is to get those agreements into this office as fast as possible," Hagadone said in a radio speech aired live late Monday afternoon.

In his address, Hagadone appealed to union members to persuade their leadership to deliver the signed agreements but did not specify a new deadline.

He said repeatedly that the investors will not negotiate with the unions and will not seek a third extension of their option to purchase the company from Gulf Resources & Chemical Corp., Houston. The offer will expire at 5 p.m. Friday.

In a telephone interview Monday night, Hagadone said some of the other unions had promised to sign the agreements, but the Steelworkers still were refusing to do so.

"Apparently, under any conditions, the United Steelworkers' outside representatives are going to see to it that Bunker Hill remains closed," Hagadone said.

Hagadone said the investors would decide by this afternoon whether to call off the purchase effort if the union continues to reject the proposal.

Meanwhile, national and regional union officials assumed control of the Steelworkers Local 7854 in Kellogg, after the Sunday night resignation of local union President Ken Flatt and his 11-member executive board.

Local leaders resigned because they viewed the outcome of Sunday's election as a vote of no confidence in their bargaining abilities, according to Cass Alvin, the Steelworkers' public relations representative for 10 Western states.

He said union officials will continue to refuse to sign the labor proposal until the investors negotiate an agreement with union representatives.

Alvin said the vote Sunday was an advisory referendum that indicated the workers willingness to negotiate concessions with the potential Bunker Hill owners

"What we had before us was not a collective bargaining agreement," Alvin said "It was sort of a Polish government ultimatum."

He said the investors took advantage of a desperate situation in the Silver Valley and refused to negotiate their proposal, which he said amounted to a "death warrant" for the unions.

"I'm sure there will be no agreement signed and delivered tonight," Alvin said Monday evening "There's absolutely nothing in that agreement that anybody in his right mind would sign. They thought they had the community sufficiently impressed to exact a pint of blood and a pound of flesh and the union is not going to buy that."

In the absence of new agreements, Alvin said the unions' contracts with Gulf will remain binding until the agreements expire in mid-1983.

The potential investors' include Hagadone, Harry F Magnuson, J. William Pfeiffer Jr and the J.R. Simplot Co in Boise Bill Maxwell, a Simplot spokesman in Boise, said the company was "confused" about the unions posture on Monday

"We can't believe it," Maxwell said 'We're facing deadlines by the hour"

He said the labor dispute will jeopardize financing and will probably prevent a sale if it is not resolved.

A member of the carpenter's union said union meetings were continuing in Kellogg Monday night

A Shoshone County sheriff's deputy said hot tempers flared between union members who voted yes and union members who voted no in the advisory vote and deputies were in Kellogg briefly but left when the situation apparently calmed late Monday.

Kellogg police and Idaho State police from Coeur d'Alene also said Kellogg was quiet Monday night.

THE IDAHO STATESMAN
Boise, Idaho
January 20, 1982

Bunker Hill plans snarled by union fight

By MARY KELTZ
The Idaho Statesman

Efforts to purchase and reopen the Bunker Hill Co. bogged down Tuesday in a tangle of legal disputes between labor unions, their members and the potential buyers of the northern Idaho lead, zinc and silver operation.

Bunker Hill workers mounted two efforts Tuesday to force the Pittsburgh-based United Steelworkers of America to sign a labor agreement proposed by investors who hold an option to purchase the Kellogg company from Gulf Resources and Chemical Corp.

In the first action Tuesday morning, a group of newly elected local Steelworkers officials signed and delivered the agreement to Coeur d'Alene publisher Duane B. Hagadone, the investors' representative. Former union president Ken Flatt and his 11-member executive board resigned Sunday night following an advisory vote by members approving the proposed labor agreement.

But Hagadone said the investors' attorneys had not approved the agreement and were still investigating the document's legal status Tuesday night.

"Apparently this is not something that can be found in every law book," Hagadone said at an afternoon press conference. "It's a very complex problem."

He said the investors had received complete agreements from two of seven unions representing Bunker Hill workers. Partial agreements have been received from the other five unions, including the new delegation from Steelworkers Local 7854 in Kellogg, Hagadone said. The Steelworkers represent 1,500 of the 1,800 union workers at Bunker Hill.

"We have agreements with all the unions but they are not valid because they have not been signed by the internationals," he said.

Cass Alvin, the Steelworkers' regional spokesman, said Tuesday morning's election of new local officers was not legal because it was not conducted according to union rules. He said the investors would risk legal battles if they accepted the agreement and tried to enforce it.

Furthermore, Alvin said, the proposed agreement would not be legal, no matter who signed for the union. He said the union cannot adopt an entirely new contract with the investors; rather, he said, the union can negotiate to reopen bargaining on existing contracts that would adopt economic concessions to assist a purchase effort.

Alvin said the Steelworkers' contract with Bunker Hill states that it shall remain intact in the event of a sale or change in management until it expires in August 1983. The investors' proposal, which calls for a 25 percent cut in pay and cuts in other benefits, would nullify that contract and substitute an entirely new agreement, he said.

Five unions notified Bunker Hill that they are ready to negotiate concessions to promote the company's sale and survival, Alvin said.

"Every member who works at Bunker Hill and the other unions would have the right to go down and sue the Steelworkers if we were to sign away their rights," Alvin said. "We have a legal agreement and we want that recognized."

In a separate action Tuesday, an attorney representing about 200 Bunker Hill workers filed a class action suit in 1st District Court against the Steelworkers union.

Attorney Thomas A. Mitchell said the suit seeks to compel the union to honor the workers' 695-506 vote on Sunday to approve the labor proposal. In addition, it claims that each worker should receive $250,000 for economic losses caused by the union's refusal to accept the agreement. The suit also seeks $500,000 in punitive damages from the union, Mitchell said.

First District Judge James G. Towles issued a temporary restraining order to prevent the union from interfering with local officials' efforts to implement the workers' vote.

Last week, the investors, who include Harry F. Magnuson of Wallace and the J.R. Simplot Co., gave union members a take-it-or-leave-it contract offer that unless accepted would doom efforts to purchase the company which ended operations the end of last year. The investors' option to buy the company expires Friday afternoon.

SPOKESMAN-REVIEW
Spokane, Washington
January 20, 1982

Silver Valley job crisis grows

By RITA HIBBARD
Spokesman-Review

KELLOGG, Idaho — Defiant Bunker Hill Steelworkers elected a new slate of union officers Tuesday morning and sent them to Coeur d'Alene carrying a back-to-work agreement to the investor group trying to save the smelter.

But questions remained Tuesday about the legality of the election and whether approval of a similar work agreement could be obtained from smaller craft unions.

"WE'RE IN DEEP trouble," investor Duane Hagadone said Tuesday afternoon. "Let's face it, we've lost another day."

The option to buy the plant expires Friday at 5 p.m.

The crisis in the Silver Valley grew more complex Tuesday when a judge issued a temporary restraining order prohibiting the United Steelworkers from "interfering with the mandate" of Local 7854 union members. A hearing on the class action suit has been scheduled for :30 a.m. Friday in Wallace.

Hagadone, who told Bunker Hill employees that the contract proposal offered last week is the only one they will get, asked his attorneys Tuesday morning to review the agreement signed by the new officers of the Steelworkers local. That contract offer cuts salaries by 25 percent.

Meanwhile, investor Harry Magnuson said Tuesday night that the group had obtained approval from all seven of the local craft unions, but lacked signatures from the "two or three" unions needing approval from their international offices.

"IT DOESN'T look good," Magnuson said as investors and their attorneys prepared to work through the night.

"We're not in yet," a Carpenters union member told The Spokesman-Review as he left Hagadone's office Tuesday night. "We need International's signature, and they keep saying 'later, later, later.' "

Craft unions known to have signed a contract include the machinists, bricklayers and boilermakers.

The Steelworkers, stymied by their union leadership's refusal to sign the agreement after the rank and file approved it, took labor law into their own hands Monday — ousting the existing officers and voting in leaders of the mutiny.

Betrayal was the dominant sentiment at the meeting of the union membership that began Monday afternoon and continued until 8:30 a.m. Tuesday. Steelworkers said their local leadership had bowed to national pressure — putting the giant union's national goals ahead of jobs in Kellogg.

THE MAN ELECTED new president of the union, Ronald L. Byrd, originally voted against the contract. But union brotherhood means the majority rules, he said, and his role as unofficial spokesman for the volatile group led to his unanimous election Tuesday morning.

Questions likely to be raised include the short notice given the meeting called to elect new officers. The meeting was announced at 2 a.m. Tuesday, just five hours before the meeting convened. Union bylaws require 90 days to impeach officers.

Whether the union's national headquarters or Local 7854 is now in control is open to debate. Perhaps the most serious threat to union actions Tuesday is the fact that the former officers, after resigning Sunday when the ballots were counted, had been reappointed to their positions by the union's national headquarters in Pittsburgh.

INTERNATIONAL and regional Steelworkers' leaders met privately in Spokane to discuss the crisis. Robert J. Petris, Steelworkers' regional director, told reporters that legally, the union cannot discuss a contract with the investor group.

"Our responsibility is with Gulf," Petris said. Gulf Resources and Chemical Corp. has offered an option to buy Bunker Hill to the investor group that includes Idaho businessmen Hagadone, Magnuson and J.R. Simplot.

Officers of Gulf Resources, including Chairman Robert Allen of Houston, were in Coeur d'Alene Tuesday to meet with members of the investor group, The Spokesman-Review learned. The seller and buyers reportedly were discussing liabilities — including settlement of pension benefits and lawsuits resulting from high lead levels in the blood of some Silver Valley residents.

OUSTED LOCAL officers and Steelworkers International officials called to Kellogg by the crisis refused comment Tuesday. Andy

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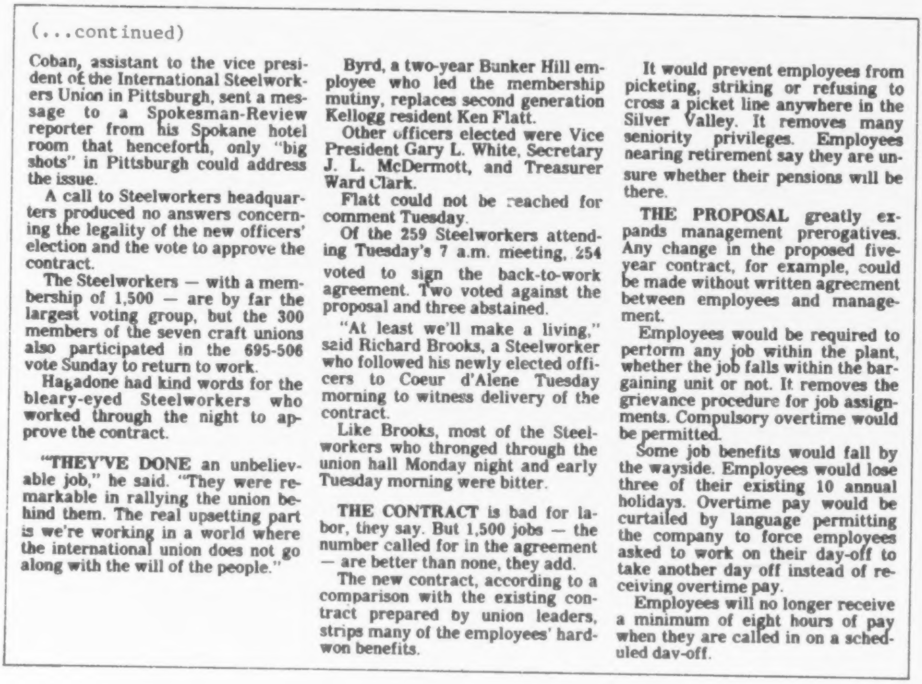

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Coban, assistant to the vice president of the International Steelworkers Union in Pittsburgh, sent a message to a Spokesman-Review reporter from his Spokane hotel room that henceforth, only "big shots" in Pittsburgh could address the issue.

A call to Steelworkers headquarters produced no answers concerning the legality of the new officers' election and the vote to approve the contract.

The Steelworkers — with a membership of 1,500 — are by far the largest voting group, but the 300 members of the seven craft unions also participated in the 695-506 vote Sunday to return to work.

Hagadone had kind words for the bleary-eyed Steelworkers who worked through the night to approve the contract.

"THEY'VE DONE an unbelievable job," he said. "They were remarkable in rallying the union behind them. The real upsetting part is we're working in a world where the international union does not go along with the will of the people."

Byrd, a two-year Bunker Hill employee who led the membership mutiny, replaces second generation Kellogg resident Ken Flatt.

Other officers elected were Vice President Gary L. White, Secretary J. L. McDermott, and Treasurer Ward Clark.

Flatt could not be reached for comment Tuesday.

Of the 259 Steelworkers attending Tuesday's 7 a.m. meeting, 254 voted to sign the back-to-work agreement. Two voted against the proposal and three abstained.

"At least we'll make a living," said Richard Brooks, a Steelworker who followed his newly elected officers to Coeur d'Alene Tuesday morning to witness delivery of the contract.

Like Brooks, most of the Steelworkers who thronged through the union hall Monday night and early Tuesday morning were bitter.

THE CONTRACT is bad for labor, they say. But 1,500 jobs — the number called for in the agreement — are better than none, they add.

The new contract, according to a comparison with the existing contract prepared by union leaders, strips many of the employees' hard-won benefits.

It would prevent employees from picketing, striking or refusing to cross a picket line anywhere in the Silver Valley. It removes many seniority privileges. Employees nearing retirement say they are unsure whether their pensions will be there.

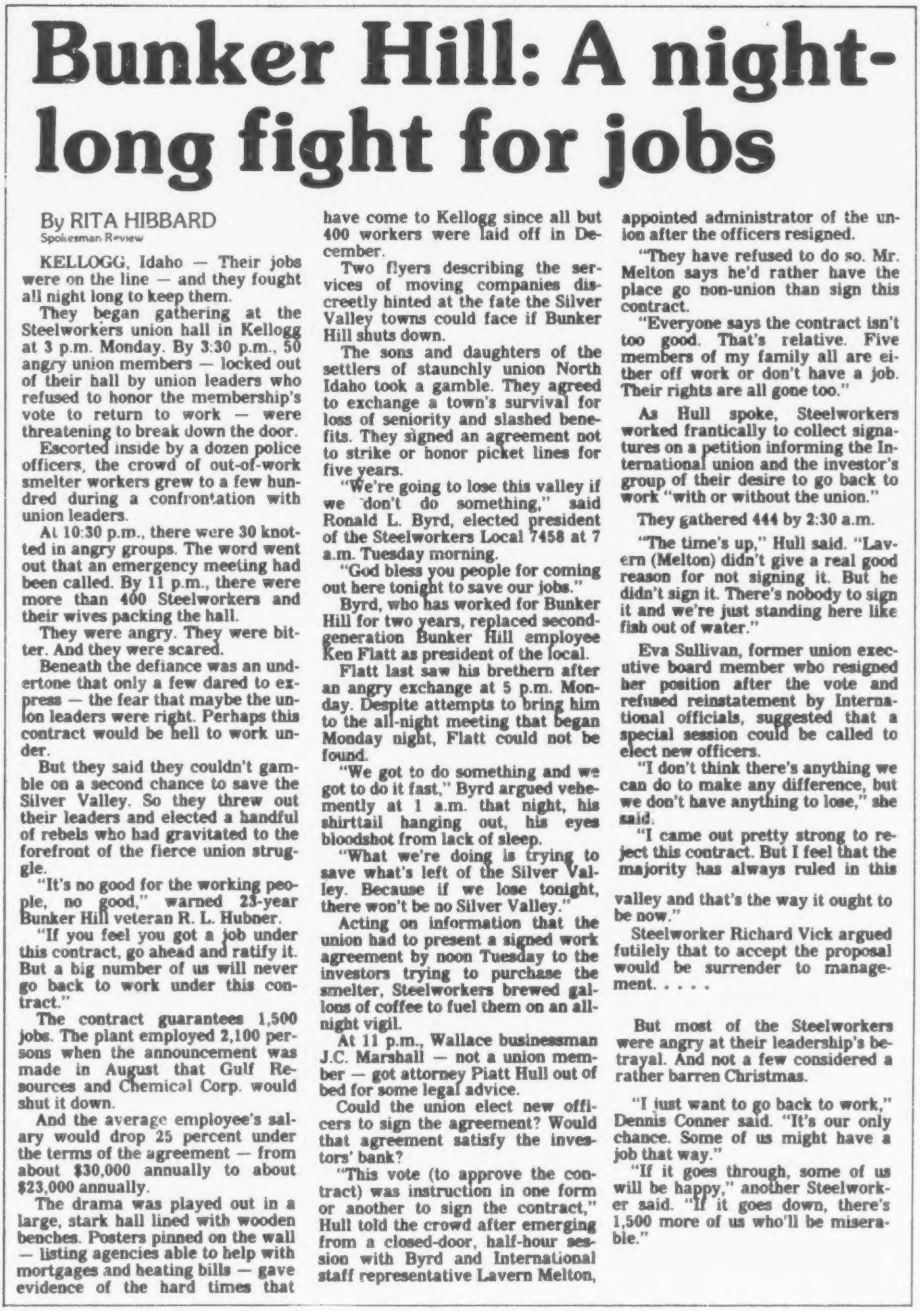
THE PROPOSAL greatly expands management prerogatives. Any change in the proposed five-year contract, for example, could be made without written agreement between employees and management.

Employees would be required to perform any job within the plant, whether the job falls within the bargaining unit or not. It removes the grievance procedure for job assignments. Compulsory overtime would be permitted.

Some job benefits would fall by the wayside. Employees would lose three of their existing 10 annual holidays. Overtime pay would be curtailed by language permitting the company to force employees asked to work on their day-off to take another day off instead of receiving overtime pay.

Employees will no longer receive a minimum of eight hours of pay when they are called in on a scheduled day-off.

SPOKESMAN-REVIEW
Spokane, Washington
January 20, 1982



Bunker Hill: A night-long fight for jobs

By RITA HIBBARD
Spokesman Review

KELLOGG, Idaho — Their jobs were on the line — and they fought all night long to keep them.

They began gathering at the Steelworkers union hall in Kellogg at 3 p.m. Monday. By 3:30 p.m., 50 angry union members — locked out of their hall by union leaders who refused to honor the membership's vote to return to work — were threatening to break down the door.

Escorted inside by a dozen police officers, the crowd of out-of-work smelter workers grew to a few hundred during a confrontation with union leaders.

At 10:30 p.m., there were 30 knotted in angry groups. The word went out that an emergency meeting had been called. By 11 p.m., there were more than 400 Steelworkers and their wives packing the hall.

They were angry. They were bitter. And they were scared.

Beneath the defiance was an undertone that only a few dared to express — the fear that maybe the union leaders were right. Perhaps this contract would be hell to work under.

But they said they couldn't gamble on a second chance to save the Silver Valley. So they threw out their leaders and elected a handful of rebels who had gravitated to the forefront of the fierce union struggle.

"It's no good for the working people, no good," warned 23-year Bunker Hill veteran R. L. Hubner.

"If you feel you got a job under this contract, go ahead and ratify it. But a big number of us will never go back to work under this contract."

The contract guarantees 1,500 jobs. The plant employed 2,100 persons when the announcement was made in August that Gulf Resources and Chemical Corp. would shut it down.

And the average employee's salary would drop 25 percent under the terms of the agreement — from about $30,000 annually to about $23,000 annually.

The drama was played out in a large, stark hall lined with wooden benches. Posters pinned on the wall — listing agencies able to help with mortgages and heating bills — gave evidence of the hard times that have come to Kellogg since all but 400 workers were laid off in December.

Two flyers describing the services of moving companies discreetly hinted at the fate the Silver Valley towns could face if Bunker Hill shuts down.

The sons and daughters of the settlers of staunchly union North Idaho took a gamble. They agreed to exchange a town's survival for loss of seniority and slashed benefits. They signed an agreement not to strike or honor picket lines for five years.

"We're going to lose this valley if we don't do something," said Ronald L. Byrd, elected president of the Steelworkers Local 7458 at 7 a.m. Tuesday morning.

"God bless you people for coming out here tonight to save our jobs."

Byrd, who has worked for Bunker Hill for two years, replaced second-generation Bunker Hill employee Ken Flatt as president of the local.

Flatt last saw his brethern after an angry exchange at 5 p.m. Monday. Despite attempts to bring him to the all-night meeting that began Monday night, Flatt could not be found.

"We got to do something and we got to do it fast," Byrd argued vehemently at 1 a.m. that night, his shirttail hanging out, his eyes bloodshot from lack of sleep.

"What we're doing is trying to save what's left of the Silver Valley. Because if we lose tonight, there won't be no Silver Valley."

Acting on information that the union had to present a signed work agreement by noon Tuesday to the investors trying to purchase the smelter, Steelworkers brewed gallons of coffee to fuel them on an all-night vigil.

At 11 p.m., Wallace businessman J.C. Marshall — not a union member — got attorney Piatt Hull out of bed for some legal advice.

Could the union elect new officers to sign the agreement? Would that agreement satisfy the investors' bank?

"This vote (to approve the contract) was instruction in one form or another to sign the contract," Hull told the crowd after emerging from a closed-door, half-hour session with Byrd and International staff representative Lavern Melton, appointed administrator of the union after the officers resigned.

"They have refused to do so. Mr. Melton says he'd rather have the place go non-union than sign this contract.

"Everyone says the contract isn't too good. That's relative. Five members of my family all are either off work or don't have a job. Their rights are all gone too."

As Hull spoke, Steelworkers worked frantically to collect signatures on a petition informing the International union and the investor's group of their desire to go back to work "with or without the union."

They gathered 444 by 2:30 a.m.

"The time's up," Hull said. "Lavern (Melton) didn't give a real good reason for not signing it. But he didn't sign it. There's nobody to sign it and we're just standing here like fish out of water."

Eva Sullivan, former union executive board member who resigned her position after the vote and refused reinstatement by International officials, suggested that a special session could be called to elect new officers.

"I don't think there's anything we can do to make any difference, but we don't have anything to lose," she said.

"I came out pretty strong to reject this contract. But I feel that the majority has always ruled in this valley and that's the way it ought to be now."

Steelworker Richard Vick argued futilely that to accept the proposal would be surrender to management. . . . .

But most of the Steelworkers were angry at their leadership's betrayal. And not a few considered a rather barren Christmas.

"I just want to go back to work," Dennis Conner said. "It's our only chance. Some of us might have a job that way."

"If it goes through, some of us will be happy," another Steelworker said. "If it goes down, there's 1,500 more of us who'll be miserable."

SPOKESMAN-REVIEW
Spokane, Washington
January 20, 1982

Wives: The private side of the effort

By LARRY YOUNG
Spokesman-Review

Bomb threats, lack of sleep and wild emotional swings from hope to despair are part of the bargain when your husband is trying to purchase Bunker Hill Co.

"Harry Magnuson broke down and wept in our home last week," said Lola Hagadone, wife of Coeur d'Alene publisher Duane Hagadone. Hagadone said Wednesday his investment team, which includes businessmen Magnuson and J.R. Simplot, had given up on the fight to re-open Bunker Hill at Kellogg, Idaho.

"These men fought so hard. They really care.

"If the workers only knew how badly these men wanted to help them, I wouldn't be crying today," said Mrs. Hagadone, a speech therapist.

She said tears were triggered again each time a friend who worked for Bunker Hill called on the phone.

She said a hectic day led up to Magnuson's emotional outburst. Mrs. Hagadone had driven with her husband to Osburn, Idaho, for a radio talk show to explain the investors' proposed work contract.

Coeur d'Alene police chief Frank Premo said the station received one bomb threat while Hagadone was speaking.

A caller muttered, "We ought to blow this place up."

Later, Paul Robinson, manager of Osburn's KWAL, moved out of his home and took his children out of school because of another death threat.

As threats to Hagadone's life continued to come in, U.S. Secret Service agents and undercover police officers began guarding the entrance to Hagadone's lakefront building. Other investors hired private guards.

Mrs. Hagadone continued: "Because Colleen (Magnuson's wife) and myself were breathing every breath our husbands took, that night Duane and Harry promised to take us out. They were taking us to the Idaho (basketball) game and to dinner.

"It was a treat.

"But when we got home, both men got delayed by calls. Then it was 10 p.m., both still on the phone. Each one was trying to get the other man to go out first into the living room, where Colleen and I were waiting."

She said Duane came out saying,"Am I still married?"

"Then we sat around talking about the good folk we knew in Kellogg. I remembered when I used to drive the back roads around Kellogg trying to find handicapped children who needed speech therapy," she said.

She said they talked about Idaho family and friends.

Suddenly, Hagadone said, "Do we have a chance?"

Magunson said, "We're going to give it all we got."

Then he broke into tears.

"Time stopped for a moment. We hugged each other silently, gathering strength," she said.

Someone broke the silence: "We're going to make it."

Mrs. Hagadone said in the last few days before the team gave up, the men were forced to get by on two hours of sleep a night. The phones would not stop ringing.

Mrs. Hagadone's daughter, Page Spurlock, and Hagadone's son, Todd, live with them. She said the children adjusted quickly to the turmoil and strange hours. They also have two children not at home.

Mrs. Hagadone said meals were mostly skipped or consisted of a cup of soup.

"One day Duane didn't eat anything or even drink coffee or a Coke. He was too excited.

> ***'If the workers only knew how badly these men wanted to help them, I wouldn't be crving today.'***

"My husband loves meat loaf. But since the investment group was formed, in early December, I didn't have time to make any. One night he called and asked, 'Can I have meat loaf for dinner?'

"It was ready at 7 p.m. We ate it at 11."

She said it hurt to see the man she loved look so tired all the time.

But he, like the others on the team, was totally involved.

"They wanted to rebuild. You know, when a house burns down, the neighbors used to help with skills like carpentry and stone masonry. They are businessmen and they know how to make businesses work."

Mrs. Magnuson said her husband is heartsick because "we can't use all those talents held by the Bunker Hill workers."

"My father and brothers worked in the mines. We grew up in Silver Valley," she said.

None of the Magnusons' five children are still at home, but the confusion was relayed to them by long-distance telephone.

"Harry would come home so weary, he'd refuse any food. I had to make him take a bowl of soup," she said.

Mrs. Magnuson said she was frightend by the threats, but her husband kept saying something good would come from it.

"The men were so supportive of each other. And had a tremendous desire to make it a success," she said.

Mrs. Hagadone said the investors tried to treat people fairly.

"Jack Simplot is 73. Yet he told Duane he'd walk through the Bunker Hill plant even if it took a week to do it. He spent his birthday in the mine."

COEUR d'ALENE (ID) PRESS
January 20, 1982

Moore: Unions are 'torching' mining

BOISE (UPI) — Sen. William Moore, R-Hayden Lake, blasted out-of-state labor officials Tuesday for putting a "union torch" to Idaho's mining industry through their intervention into attempts to save Bunker Hill Co. from closure.

He told the Senate that Pittsburgh-based officials of the United Steelworkers of America have meddled with the operation of the union local which voted Sunday on a proposed contract under which a group of investors would purchase Bunker Hill from Gulf Resources & Chemical Co., Houston.

If the national union officials are able to shoot down the proposed agreement, "one of our major industries...will have been put to the union torch by men who will fly back to Pittsburgh, where their jobs will still be waiting, and forget that Bunker Hill ever existed," Moore said.

Union members approved the proposal 695 to 506, but the local leadership denounced the proposal and resigned, refusing to sign the agreement. Investors have until Friday to take an option to buy Bunker Hill.

Moore also attacked the Legislature for failing to pass a right-to-work bill — and Gov. John Evans for saying he would probably veto such a bill if it ever reached his desk.

Moore said a right-to-work law "would allow individual Bunker Hill workers to leave the eastern-dominated union if that's what it took to save their jobs."

"Without right-to-work those workers are forced to accept and support by compulsory dues from their paychecks the out-of-state union officials who would rather sacrifice Idaho jobs than lose union control," he claimed.

Moore said it is too late to do anything this year to address the Bunker Hill situation in the Legislature. But he said the possible closure of the Kellogg minerals producer would help build a case for future passage of a bill to ban compulsory union membership as a condition of employment.

Sen. William Moore
Blasts outside intervention

IDAHO STATE JOURNAL
Pocatello, Idaho
January 20, 1982

Evans Moore Dispute Relation Of Right to Work, Bunker Hill

BOISE (AP) — Gov. John Evans Tuesday attacked statements delivered on the Senate floor by Hayden Lake Republican Sen. William Moore which said Evans' failure to support righ-to-work legislation last year added to the downfall of the Bunker Hill Co. in Kellogg.

Evans said in a prepared statement that legislators "would resent the implication that it was because of my influence that they were not capable of making up their own minds on this issue."

Moore made his remarks on the heels of news from Bunker Hill that some agreements with unions had been signed, giving some hope to keeping the mining and smelting operation going.

"In this state the individual worker is not free to choose, as exhibited by the flagrant abuse of power by union offficials who quote 'represented' workers by calling their vote 'advisory,'" Moore said.

Moore was speaking of a conflict between the steelworkers union at Kellogg and its officers over an agreement to save the financially-troubled complex.

A group of investors has given the Bunker Hill union until Friday to accept a contract calling for a 25 percent reduction in wages and benefits. The investors plan to invest some $65 million into the complex to take it over, but the group has said it would take the union's acceptance of the agreement before the venture could be successful.

Sunday the union rejected the recommendation of the local union president and approved the plan from the investment group. Following the vote, local union president Ken Flatt and the union's board resigned.

Tuesday, a new board and president were elected to lead the union, but it was not known if the new union leaders' approval of the contract with the investors would be binding.

"I called Jerry Turnbow (Bunker Hill vice president) at Bunker Hill to discuss these events and the alternatives still open," Moore said. "He assured me — if the Pittsburgh union bosses maintain their present attitude, Friday will come and go, the investors will bow out, and Bunker Hill will close."

But Moore said the conflict with the union and the investors could have been avoided if the state had approved a right-to-work bill.

But Evans said Tuesday, "Sen. Moore appears to be making a premature prediction regarding the demise of Bunker Hill. Word from the North indicates that agreements between the investors group and some of the unions have now been signed. We're optimistic that things are moving ahead and the purchase will be concluded."

Brooks May Try Again on Right to Work

Journal Boise Bureau

BOISE — State Rep. John Brooks, R-Gooding, who introduced the last two Right to Work bills in Idaho in 1981 and 1977, said this morning he is "still leaving my options open for a few days" on whether to try again this year.

Brooks did say he's getting some encouragement in the wake of labor problems at the Bunker Hill mine and smelter in Kellogg. (See story above.)

"I think in a case like Bunker Hill," he told the Idaho State Journal this morning, "if we had a Right to Work law I don't think you would see the union leaders do what they did."

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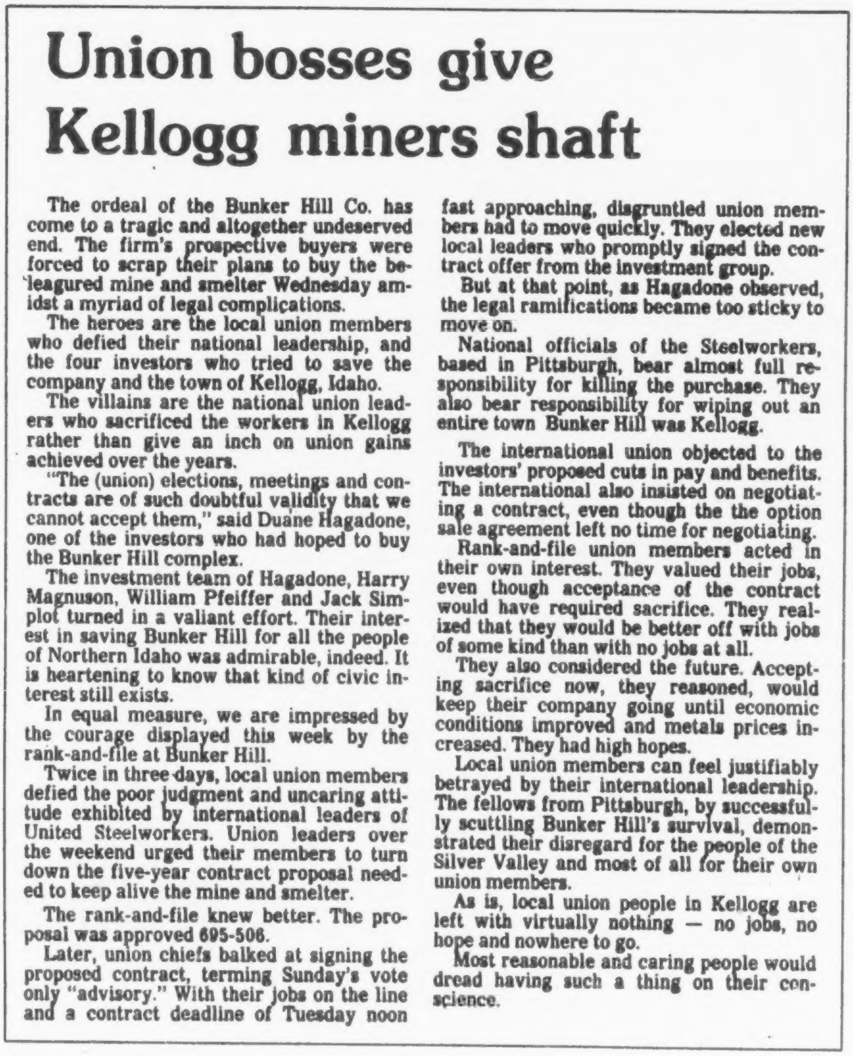
Spokane, Washington
January 21, 1982



Union bosses give Kellogg miners shaft

The ordeal of the Bunker Hill Co. has come to a tragic and altogether undeserved end. The firm's prospective buyers were forced to scrap their plans to buy the beleagured mine and smelter Wednesday amidst a myriad of legal complications.

The heroes are the local union members who defied their national leadership, and the four investors who tried to save the company and the town of Kellogg, Idaho.

The villains are the national union leaders who sacrificed the workers in Kellogg rather than give an inch on union gains achieved over the years.

"The (union) elections, meetings and contracts are of such doubtful validity that we cannot accept them," said Duane Hagadone, one of the investors who had hoped to buy the Bunker Hill complex.

The investment team of Hagadone, Harry Magnuson, William Pfeiffer and Jack Simplot turned in a valiant effort. Their interest in saving Bunker Hill for all the people of Northern Idaho was admirable, indeed. It is heartening to know that kind of civic interest still exists.

In equal measure, we are impressed by the courage displayed this week by the rank-and-file at Bunker Hill.

Twice in three days, local union members defied the poor judgment and uncaring attitude exhibited by international leaders of United Steelworkers. Union leaders over the weekend urged their members to turn down the five-year contract proposal needed to keep alive the mine and smelter.

The rank-and-file knew better. The proposal was approved 695-506.

Later, union chiefs balked at signing the proposed contract, terming Sunday's vote only "advisory." With their jobs on the line and a contract deadline of Tuesday noon fast approaching, disgruntled union members had to move quickly. They elected new local leaders who promptly signed the contract offer from the investment group.

But at that point, as Hagadone observed, the legal ramifications became too sticky to move on.

National officials of the Steelworkers, based in Pittsburgh, bear almost full responsibility for killing the purchase. They also bear responsibility for wiping out an entire town Bunker Hill was Kellogg.

The international union objected to the investors' proposed cuts in pay and benefits. The international also insisted on negotiating a contract, even though the the option sale agreement left no time for negotiating.

Rank-and-file union members acted in their own interest. They valued their jobs, even though acceptance of the contract would have required sacrifice. They realized that they would be better off with jobs of some kind than with no jobs at all.

They also considered the future. Accepting sacrifice now, they reasoned, would keep their company going until economic conditions improved and metals prices increased. They had high hopes.

Local union members can feel justifiably betrayed by their international leadership. The fellows from Pittsburgh, by successfully scuttling Bunker Hill's survival, demonstrated their disregard for the people of the Silver Valley and most of all for their own union members.

As is, local union people in Kellogg are left with virtually nothing — no jobs, no hope and nowhere to go.

Most reasonable and caring people would dread having such a thing on their conscience.

SPOKESMAN-REVIEW
Spokane, Washington
January 21, 1982

Bunker Hill deal crumbles

By LARRY YOUNG
Spokesman-Review

Investors gave up their fight to save the Bunker Hill Co. at Kellogg, Idaho Wednesday.

"We're out of business now," investor spokesman Duane Hagadone told a news conference, blinking to hold back tears.

He said the investors have terminated their option to buy the plant, told the bank to stop work on their loan request, stopped trying to get environmental waivers and dispersed a large team of lawyers working on the plan.

He said the investors had to give up their option to purchase Bunker Hill because their lawyers questioned an irregular union election and contract signatures.

Emotional swings:
Hope to despair
in Kellogg — Page 7

"THIS IS ONE of the toughest things I have had to do in my life," said Hagadone, a Coeur d'Alene newspaper publisher.

"We have been advised by our counsel . . . that the election and execution of contracts are of such doubtful validity, we cannot accept them."

A few hours later, Bunker Hill's parent firm, Gulf Resources & Chemical Corp., Houston, Tex., ordered the sprawling lead-zinc smelter and mining complex closed.

"We're all acutely disappointed," said Robert E. Bowman, vice president of Gulf Resources, in Houston.

An orderly shutdown of Bunker Hill will be carried out "as quickly as possible."

He said the plant is "substantially all closed now" with most of its normal 2,100 employees laid off already.

INVESTORS HAD said they could not get bank financing for the purchase without signed contracts from the Bunker unions. Hagadone said only two unions — the machinists and the bricklayers — had submitted agreements properly signed by international officers. The six other crafts at Bunker Hill, including the Steelworkers, did not.

Ken Flatt, president of the Bunker Hill local of the Steelworkers Union, had called Hagadone early Wednesday and said he'd had "an agonizing, sleepless night" and was willing to sign.

"He did execute the local Steelworkers agreement," said Hagadone. "He has the total interest of the union membership in mind."

The decision to terminate the option came with stunning suddenness. Hopes had ridden high in area which will feel the full brunt of encomic impact of Bunker Hill's closure — Wallace, Kellogg and Coeur d'Alene — after a union election Sunday. On Sunday, workers approved the investors' proposed labor agreement by a vote of 695 to 506.

Hagadone's group, consisting of Idaho mining millionare Harry F. Magnuson, South Idaho potato king Jack Simplot, and California mining consultant J. William Pfeiffer were jubilant. They thought the way was clear to acquiring Bunker Hill.

But then problems developed.

United Steelworkers Union's international leaders balked at signing labor agreements and even called the election merely advisory.

Angry union members held their own election, after threatening to kick in the door of Steelworkers Union hall. The new officers sent the agreements to Hagadone.

Hagadone blamed the unions' international leadership, not local officers, for the failure.

"WE MET WITH the unions on Jan. 13 and made it very, very clear to the unions they had only until Monday to get the signed copies of the agreement in," he said.

When the unions passed the proposal he said, "old miners considered it unbelievable" and Hagadone's group was "gratified, excited and planning to move ahead."

But the contracts weren't signed. And, because of doubts about the validity of the election early Tuesday, the investors' lawyers said the contracts wouldn 't be valid without signatures of international officers.

Hagadone said over 1,000 union members had signed a petition in Kellogg Wendesday supporting the investors' agreement.

"I find it unbelievable that an action of this magnitude can take place in the United States today and especially in the Mining District," said Hagadone, showing the effects of nearly 48 hours without sleep.

BEHIND HIM AT the news conference, stood the other investors, also looking downcast. Magnuson's eyes were moist.

Magnuson later said, "I'm tremendously disappointed."

Hagadone complimented members of the investment team for putting such long hours on the project, praised Gulf chairman Robert Allen for keeping the plant open at considerable expense and lauded Jack Simplot, 73, for walking through every inch of the plants and the mine.

Idaho Gov. John Evans listened to the broadcast news conference via a telephone hookup.

"I'm disappointed," he said. "We'll find anything we can in the last hours."

Bunker Hill's smelters produce 20 percent of the United States production of lead, zinc and silver each year. Its cadmium plant produces 360 tons of cadmium per year. And a fertilizer plant produces 60,000 tons of phosphate fertilizer.

BUNKER HILL OWNS two mines, the Crescent, a silver property and the 94-year-old Bunker Hill mine. Bunker Hill mine has produced 35 million tons of ore in its lifetime.

COEUR d'ALENE (ID) PRESS
January 21, 1982

Transcript of final word on Bunker

Following is a transcript of Duane B. Hagadone's Wednesday announcement that the attempt to rescue the Bunker Hill Co. from closure was stopped because of the national unions' refusal to sign contracts:

Good morning!

I will first bring you up to date on the events that have taken place since our 2 p.m. news conference. I will then tell you the actions that have taken place based upon these events.

First I hope you will bear with me. Coming down from my office talking to you about what I am going to have to say is one of the toughest things that I have had to do in my life.

Okay. We did receive an opinion from our legal counsel last evening in regard to the question we were waiting for to take what action the investors felt necessary.

We were advised by our counsel after extensive legal research that the meeting, the election and the execution of the contracts are of such doubtful legal validity that we cannot accept them.

After receiving that information we had an investor telephone conference for those who were not here in Coeur d'Alene. We discussed all of the events of the day.

And most important we discussed the position that our lawyers had given us in regard to the new officers in the Steelworkers Union and also to the fact that five craft union international representatives have not signed their contracts. Based on the discussions the conference called the investors unnamiously have taken the following actions.

They instructed me first to early this morning to call the chairman of the board of Gulf Resources, Robert Allen, and inform him that although the option by its terms was to run until the close of business this Friday the investor group, in light of these events, will not proceed further and consider the option terminated.

Next, we have notified our bank to halt all work in regard to our financing requests.

Third, we have had a large group of legal people, Houston, San Francisco, Boise, and Spokane working extremely hard to resolve the liability area that I have discussed with you as another point that must be brought to proper conclusion before we could have signed the option.

These people have been dispersed, back to their respective homes. All activities have stopped in that area.

One last area that we talked about is in the environmental area. Those people working in that area have also been stopped. No further work will be done.

We have had one new development. Early this morning we received a telephone call from Ken Flatt. Ken is the gentleman seated to my left, he said that he had a very agonizing sleepless night.

That he would do anything to help and wanted to do so. If it would help than he would be willing to sign the agreement. Ken came to our office a few minutes ago and did execute the local steelworkers agreement.

I asked him in what capacity he could act. He told me that on Monday morning, Mr. Melton, the appointed administrator of the union, had reappointed Ken president this Monday A.M.

We have been in contact with our legal counsel and they advised the alleged reappointment of Ken Flatt as president is probably valid under the constitution and by-laws. The only way the matter can be resolved, talking of our overall problem, would have been for the steelworkers union to sign the covered agreement.

I want to take a moment here and comment on the actions that Ken has taken. I think you have heard me say all along, through these negotiations, that I have gained a great deal of respect for Ken.

We talked about our Saturday morning meeting and our all night Friday discussions between Ken and myself.

There is absolutely no question in my mind that Ken's total interest was in his membership and that all along he has wanted to do everything that can be humanly possible to do to keep the Bunker Hill going. I think he demonstrated that by his activities of Saturday and Friday night and then again here today.

I believe you in the news media should know this.

Ken, I really compliment you and respect you for the actions that you have taken this morning to do everything that you can to help this situation and I believe that your membership should know of your position and I will continue to hold you in the highest regard and respect very much what you have done and I know that it has not been easy with the tremendous pressures that you must have been under these last days.

Thank you very, very much.

For the record, let's go back and review the events. December 11th, the date that we announced to you our exercising an option to purchase the assets of the Bunker Hill Company. In this very room I meet with Ken and the local officials of all the unions involved with the Bunker Hill Company.

They were given notice of what was being done prior to the news conference that was held that day in the North Shore. It was very explicitly discussed with them, at that time, that we would not be in a position to negotiate. That we had an option.

We were not an employee-employer relationship. That was very, very clear at the meeting in this room, and very, very clear in our press conference.

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During the days since, I cannot tell you how many times I have reiterated this situation. I repeated it, time after time.

On January 13th we met at the North Shore at 1 o'clock and presented our agreement to the unions and this was not done until after unbelievable amount of work had gone into putting together our investors group.

The work that had gone into the study, potential losses the Bunker Hill is presently suffering was projected to have, by the Gulf people, of some $40 million in 1982. We had a lot of study to do in the area of the concentrate problem.

We had a lot of legal problems to overcome. I would say since that date that your investor group has been working night and day.

We finally got to a point where we felt that with help from other vendors and suppliers that we were able to come with a plan that we could comfortably take to the union, they could accept, we would be able to exercise the option. This we did on January 13th.

At that point, it was very, very clear to them, we could not negotiate, we would not negotiate and it was also very clear to them that they had until Monday, two days ago, to get their signed copies of these agreements in and to get them signed by their respective international leaders.

This was again discussed with them on the 14th. Then the events up to Sunday at which time there was a secret vote of the members. You all know the results of that election. With close to a 200 vote majority win, in the eyes of many of the old heads in the mining district, this was unbelievable, and should be considered near a landslide victory.

Considering the tremendous amount of confusion, tremendous amount of pressure that was applied on their membership. Needless to say, the investor group was greatly gratified and were excited. We talked on Sunday night with plans to move ahead to do all of the work that needed to be done by Friday.

Monday morning the bank was notified about the vote. Our committees, working in the environmental and liabilities areas, were all in action.

Then we learned of the problem on Monday of the removal of the local officers Sunday night. We waited until Monday noon and did not get any agreements.

Since that time we have been in communication with you people, we had a press conference, we told the members the urgency getting these agreements into our building. We were aware of what happened Monday night, as I understand in the middle of the night, 3 or 4 o'clock in the morning, they had a tremendous turnout at the union hall, desperately to do something to save their jobs.

They did the absolute best they could. They did put out as much notice as they could of their meeting. They did put together by-laws, they retained two attorneys to help them. They passed those by-laws, they elected a new president. They were here in this office yesterday morning. Had not been to sleep.

My hat is off to those people, I don't believe in my vocabulary I have the proper words to express the admiration that I have for them.

It's hard for me to believe that the president that they elected to represent them to help get this problem resolved, voted against the agreement.

It is my understanding, I cannot verify this, that they have been getting petitions signed by all of the union employees of Bunker Hill and as of late last night they were closing in on 1,000 signatures.

Do you realize that means that close to 300 of the people that voted against the proposal apparently had changed their minds. And I am sure that there are some people that are not aware of the petitions for they would be happy to sign them.

And as we went through the day on Tuesday, that new president did sign the agreement and of course, as I have told you their international did not. in the course of the day, yesterday, the local officers of all the unions came into this office and signed the agreements. At our 2 o'clock news conference we talked of this. That they were not valid without signatures of their international. Which they did not have.

As you know, at this time, we have two unions, the machinist union and the bricklayers union, who have had their international reps and their local officers come in and duly sign the agreement.

They are the only two that have done what was needed to get the proper authority that we needed from the unions. Authorization to move ahead. We must have all international reps sign the contracts to make them valid.

Even with close to a 200-vote mandate and an understanding now that it is close to a 1,000, which believe me the international people know, have signed this petition, they have refused to come in and sign with the exception of the machinists and the bricklayers.

This is unbelievable to me that an action of this nature can take place in the United States. That this would especially take place in Northern Idaho. Ever since receiving word from our legal counsel, having our conference called, I have not been able to get this off my mind.

As tired as I have been in the actions of the last few days still could not sleep last night. Thank you.

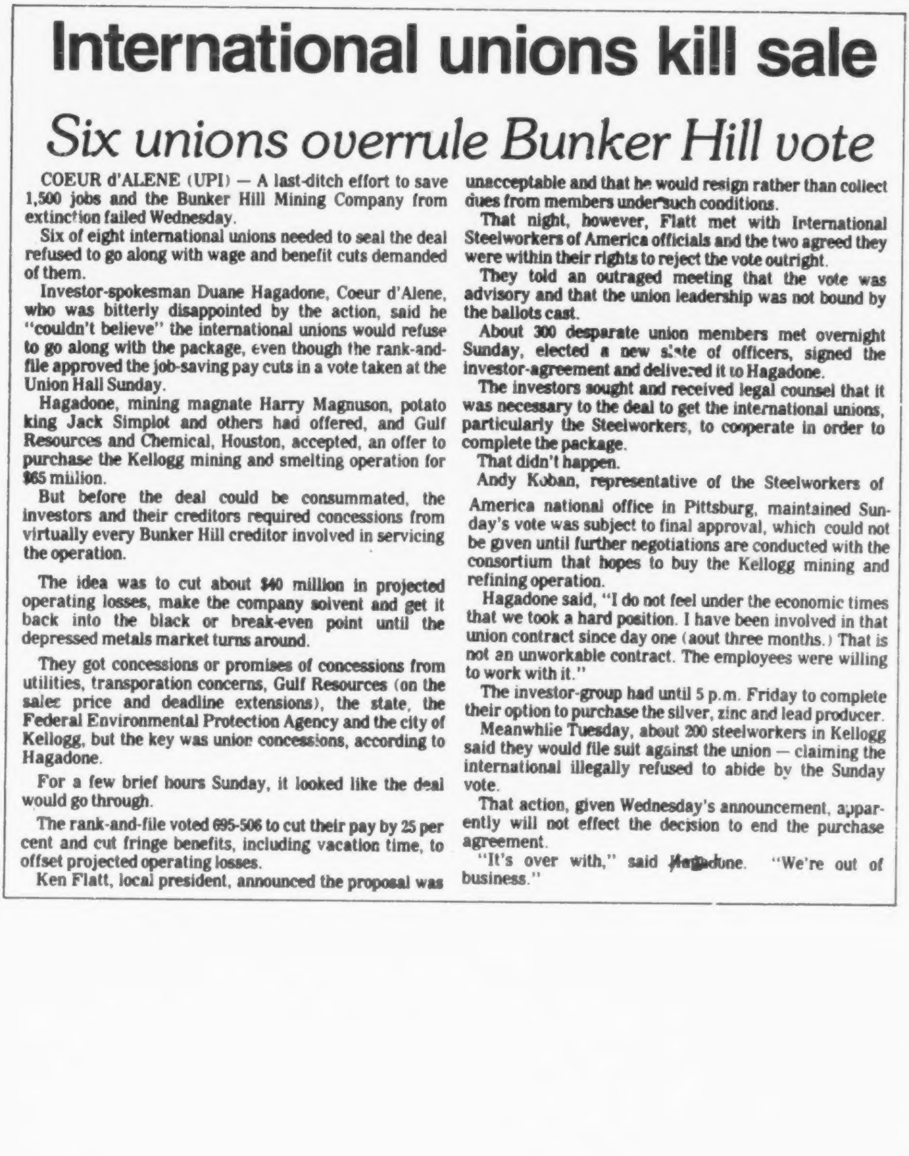
Since this is going to be our last news conference with you, I could not close without first complimenting the employees of Bunker Hill. I have talked to many of them on telephone interviews, I tried to talk to everyone that had questions, trying to clarify, watched TV reports, read the news articles. My hats are off to the people. I think you have done about everything humanly possible.

I also want to comment about the chairman of the board of Gulf Resources, Robert Allen, who has been most cooperative, he and his staff.

I publicly, on behalf of the investor group, want to thank Gulf Resources, Bunker Hill Company for being extremely helpful to our group.

Last I have got to say a word about our team. They have done a phenomenal job.

THE TIMES-NEWS
Twin Falls, Idaho
January 21, 1982



International unions kill sale

Six unions overrule Bunker Hill vote

COEUR d'ALENE (UPI) — A last-ditch effort to save 1,500 jobs and the Bunker Hill Mining Company from extinction failed Wednesday.

Six of eight international unions needed to seal the deal refused to go along with wage and benefit cuts demanded of them.

Investor-spokesman Duane Hagadone, Coeur d'Alene, who was bitterly disappointed by the action, said he "couldn't believe" the international unions would refuse to go along with the package, even though the rank-and-file approved the job-saving pay cuts in a vote taken at the Union Hall Sunday.

Hagadone, mining magnate Harry Magnuson, potato king Jack Simplot and others had offered, and Gulf Resources and Chemical, Houston, accepted, an offer to purchase the Kellogg mining and smelting operation for $65 million.

But before the deal could be consummated, the investors and their creditors required concessions from virtually every Bunker Hill creditor involved in servicing the operation.

The idea was to cut about $40 million in projected operating losses, make the company solvent and get it back into the black or break-even point until the depressed metals market turns around.

They got concessions or promises of concessions from utilities, transporation concerns, Gulf Resources (on the sales price and deadline extensions), the state, the Federal Environmental Protection Agency and the city of Kellogg, but the key was union concessions, according to Hagadone.

For a few brief hours Sunday, it looked like the deal would go through.

The rank-and-file voted 695-506 to cut their pay by 25 per cent and cut fringe benefits, including vacation time, to offset projected operating losses.

Ken Flatt, local president, announced the proposal was unacceptable and that he would resign rather than collect dues from members under such conditions.

That night, however, Flatt met with International Steelworkers of America officials and the two agreed they were within their rights to reject the vote outright.

They told an outraged meeting that the vote was advisory and that the union leadership was not bound by the ballots cast.

About 300 desparate union members met overnight Sunday, elected a new slate of officers, signed the investor-agreement and delivered it to Hagadone.

The investors sought and received legal counsel that it was necessary to the deal to get the international unions, particularly the Steelworkers, to cooperate in order to complete the package.

That didn't happen.

Andy Koban, representative of the Steelworkers of America national office in Pittsburg, maintained Sunday's vote was subject to final approval, which could not be given until further negotiations are conducted with the consortium that hopes to buy the Kellogg mining and refining operation.

Hagadone said, "I do not feel under the economic times that we took a hard position. I have been involved in that union contract since day one (aout three months.) That is not an unworkable contract. The employees were willing to work with it."

The investor-group had until 5 p.m. Friday to complete their option to purchase the silver, zinc and lead producer.

Meanwhlie Tuesday, about 200 steelworkers in Kellogg said they would file suit against the union — claiming the international illegally refused to abide by the Sunday vote.

That action, given Wednesday's announcement, apparently will not effect the decision to end the purchase agreement.

"It's over with," said Hagadone. "We're out of business."

COEUR d'ALENE (ID) PRESS
January 21, 1982

Bunker shutdown called 'tragedy'

The day after plans to purchase the Bunker Hill Co. were scrapped because of refusal by national union officials to sign needed labor contracts, reaction by local, state and national officials was sharp.

Idaho's U.S. Sen. Steve Symms called the impending closure of Bunker Hill a "great human tragedy," and blistered the unions for their actions.

"I am just sick over this news," he said. "Idaho has known few disasters that compare to the tragedy at Bunker Hill.

"A successful agreement could have been reached. The investors were ready, the federal government was supportive and the workers, most of all, were willing to make great sacrifices in order to keep the operation going.

"Unfortunately, big union officials in Pittsburgh refused to cooperate. They would not agree to a productive contract as agreed to by the local workers and, in my opinion, they abandoned their membership in Idaho.

"At considerable risk a group of investors were willing to keep the smelter in operation. For that to occur, as in any business, cost of production had to be kept to a level to ensure that a bar of lead or zinc doesn't cost more to produce than it's worth.

"A union representative from Pittsburgh told me some time ago that the union did not want to compromise on the contract because USW did not want to 'set that kind of precedent,' " Symms said.

"The 2,500 jobs in Idaho don't mean anything to those people.

"United Steelworkers is more concerned with its national image. They're trying to save face while the workers in north Idaho who have devoted their entire lives to Bunker Hill are trying to save their families."

Idaho's Speaker of the House, Ralph Olmstead, said he was "angered and disappointed at the out-of-state union leaders."

He said their failure to go along with the wishes of their members is a "tragic turn of events for the people of the Silver Valley and the entire state

"These high-ranking union officials have told the miners their votes mean nothing. However, I want them to know the legislature stands ready to aid them in any way possible.

"It is about time Idaho passed a Right To Work law."

Wednesday, Idaho Sen. Jim McClure commended the investor group and all the workers for trying to "put together a package to save that industry."

He said certainly the last two weeks of activity was by far the brightest hope for keeping the Bunker Hill open since Gulf Resources announced the closure last Aug. 25.

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McClure said he was "extremely disappointed" that a majority vote of the workers "did not prevail."

Idaho's congressional delegation and legislative leaders are blaming union officials for failure of a purchase plan for the ailing Bunker Hill Co.

But Rep. Larry Craig, R-Idaho, said he won't give up despite the "bleak" situation and will continue his attempts to keep the mine and smelting complex open and 2,100 workers on the job.

However, Idaho Gov. John Evans would not commit himself to taking a strong stand either way.

Evans said he believed it was inappropriate to lay blame for failure of the purchase plan on either side.

"The investor group did everything they could," he said. "The International (Steelworkers of America union) just couldn't sign it (the new labor agreement) because of legal matters."

Evans did not comment on the action by union officials to ignore a majority vote by Bunker Hill workers wanting to accept the investor proposal.

Craig and Evans, however, said they would continue working in their attempts to keep at least part of the silver, lead and zinc operation functioning.

Craig said he had "invested too much time to let this thing go down if there's anything that can be done to save it." He vowed to continue working with union leaders in a last-ditch attempt to save jobs.

Rep. George Hansen, RIdaho, meanwhile, said local union members in Kellogg should have the "final say as to what affects their lives."

"I certainly hoped that with arguments within the unions, the will of the local people who are directly concerned for their jobs would prevail," he said.

Lt. Gov. Phil Batt, a gubernatorial candidate, said he was "deeply disappointed" over the breakdown, saying it was "too bad that Idaho's people were not able to shape their own destiny."

And state Senate Majority Leader James Risch, R-Boise, said the unions' refusal to honor local members' votes "deteriorate people's opinions of unions, especially on the national level."

"People generally support a democratic system of a majority vote, but that wasn't done here," he said.

On a local level, Glenn Jackson, Kootenai County Commissioners chairman: "I think it's a shame when the image of the union is unbendable. It just shatters the local economy."

E. Viet Howard, Sunshine Mining Co. executive vice-president said it was "not the first time Steelworkers International has ignored the wishes of its membership."

A similar union action, following a similar rank-and-file vote, resulted last year in the closure of a steel plant in California and the loss of 3,000 jobs, he said.

Sunshine's business is not directly affected by the Bunker news, he said, but "it makes Kellogg a less desirable place to live and work for our employees. If a man's worrying about the value of his home, it's difficult for him to do his job and do it safely."

He praised the investor group and the people of the Silver Valley. "We proved we can stand together if we can eliminate outside influences."

THE IDAHO STATESMAN
Boise, Idaho
January 21, 1982

Union officials blamed for failure of Bunker deal

By GARY STRAUSS
The Idaho Statesman

Idaho's congressional and legislative leaders Wednesday blamed national union officials for thwarting efforts to keep the struggling Bunker Hill Co. in operation.

An investor group headed by Wallace businessman Harry Magnuson, Coeur d'Alene businessman Duane Hagadone and potato magnate J.R. Simplot of Boise attempted to buy Bunker Hill for $50 million in cash and about $15 million in future profits, but the deal hinged largely on the acceptance of contract concessions by union officials, Hagadone said.

Local union members approved the concessions in a 695-506 vote Sunday, but the national leaders for five of seven international unions rejected the local unions' efforts.

Sen. Steve Symms, R-Idaho, said union leaders outside of Idaho helped caused Bunker Hill's downfall.

He said the union members voted to accept the labor proposal to save jobs and keep Bunker Hill alive, but "they're being denied that chance by union bosses in Pittsburgh."

Steve Symms

Symms charged that top union officials did not have an interest in the "human tragedy" of people losing their jobs.

"It's a sad day," Symms said. "The union bosses in Pittsburgh seem to hold the upper hand."

Symms said he thought the investor's group trying to purchase Bunker Hill could have held the company together until metal prices improved.

In a press release issued by his office, Sen. James McClure, R-Idaho, said he was "extremely disappointed" that the agreement between the unions and the investment group had fallen through.

Larry Craig

At an impromptu news conference Wednesday evening in Spokane, Rep. Larry Craig, R-Idaho, said there was still a chance to salvage the proposed sale of the company, which had apparently been derailed by an irregular union election along with questioned agreements on contract concessions by Bunker Hill employees.

"I am here because I have invested too much time to let this thing go down if there's anything that can be done to save it," Craig said during a recess from a last-minute meeting where efforts were being made to salvage the company.

George Hansen

Craig's press secretary, Scott Fisher, said Craig planned to talk with leaders of the International Steelworkers Union in a last-ditch effort to have union leaders decertify the Kellogg local.

Second District Rep. George Hansen, R-Idaho, said local union members in the Kellogg area should have the "final say as to what affects their lives."

"I certainly hoped that with arguments within the unions, the will of the local people who are directly concerned for their jobs would prevail," Hansen said. "It would be unfortunate if outsiders made the decisions that would affect people who will be out of work."

Lt. Gov. Phil Batt, a gubernatorial candidate, said he was "deeply disappointed" over the breakdown of negotiations between the unions and the investment group.

"It's too bad that Idaho's people were not able to shape their own

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Phil Batt

destiny," Batt said.

Batt supported Gov. John Evans' efforts to keep Bunker Hill afloat.

Idaho Senate Majority Leader Jim Risch criticized national leaders for not honoring the local union members' vote.

"It's extremely unfortunate that the national unions wouldn't honor the locals' vote," he said. "They are putting people out of work that want to work. Their actions deteriorate people's opinions of unions, especially on the national level. People generally support a democratic system of a majority vote, but that wasn't done here."

Idaho House Speaker Ralph Olmstead said he sympathized with union members who voted in favor of the contract concessions.

"They voted that they wanted and needed to work, but it turns out their votes were meaningless because of the obstacles between union officials from out of state and their prospective employers," Olmstead said.

"The workers might have lost their last opportunity to retain their employment because of the incomprehensible, stubborn attitude of those out-of-state union officials," Olmstead said.

"It's about time we passed a right-to-work law in our state," he said. "Had we such a law, this disaster would not have occurred."

Olmstead, also a gubernatorial candidate, commended Evans' efforts to establish a task force this fall to keep Bunker Hill afloat, but said Evans should have done more lobbying to bring national union representatives and the investment group closer toward a settlement.

A third gubernatorial candidate, Bernie Fisher of Kuna, said national union representatives "went a little overboard" in their part of the Bunker Hill negotiations.

Fisher complimented Evans' efforts to find a buyer for Bunker Hill, but he said the governor "moved a little slow" initially when the firm's owner, Gulf Resources Corp., announced its intentions to close the Kellogg plant in August.

IDAHO PRESS-TRIBUNE
Nampa, Idaho
January 21, 1982

Counties may lose $95 million

CHENEY, Wash. (UPI)— An economics professor says the closure of the Bunker Hill Mining complex at Kellogg, Idaho, will cut $95 million from the payrolls of Shoshone and Kootenai counties and could push unemployment in Shoshone County to as high as 50 percent.

An Idaho investor group pulled out of further efforts to buy the complex Wednesday, paving the way for the owner, Gulf Resources and Chemical, Houston, to continue its plans to close the plant.

Dr. Shik Young said his economic base study showed the total number of jobs that would be lost in Shoshone and Kootenai counties would exceed 5,000 and push Kootenai County's unemployment level to 20 per cent.

"If the unemployed do not migrate, the unemployment in the region could reach disaster levels," Young noted.

Nearby Spokane County would also stand to lose about 800 jobs and raise the unemployment rate there by one-half a percentage point.

Young said the Bunker Hill's payroll with 2,100 employees was $50 million.

He said this loss would generate another $45 million reduction with Shoshone County's share totaling $67.5 million and Kootenai County's at $27.5 million.

Spokane's loss would total about $14 million.

The state also stands to lose about $9.5 million annually as a result of the Bunker Hill closure.

"The actual burden on the state's finances will undoubtedly exceed this figure when employment compensation and welfare assistance are taken into account," said Young.

COEUR d'ALENE (ID) PRESS
January 21, 1982

How would you weigh efforts to save Bunker Hill?

Ed Jones, city councilman

"The group of investors went all out trying to save Bunker Hill. I would blame the national unions."

Cathy Knight, cosmetologist

"The purchasers did just about everything they could. The unions now have just about destroyed our economy here."

Justin Van Dyke, milkman

"The efforts on the part of the buyers were very sincere. The Unions just didn't come over here and do their part to keep (Bunker) running."

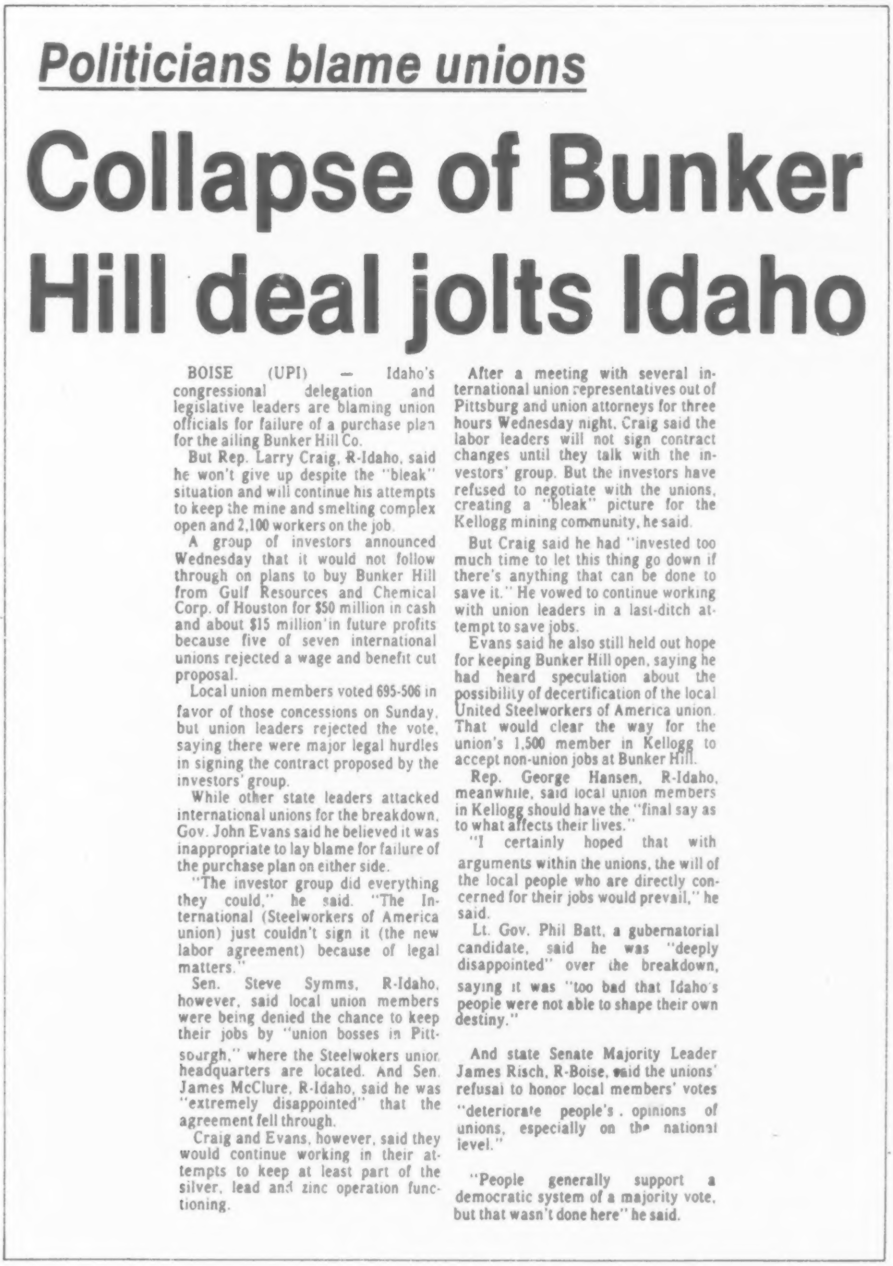
Don Holder, artist

"(The closure) seems to be the fault of the unions. The proposal might have been a little less than honest, but it boils down to the unions."

Roger Hudson, restaurant owner

"I'm thoroughly pleased with the job the investors did. They did an outstanding job. There must have been unbearable pressure put on by the national unions."

IDAHO PRESS-TRIBUNE
Nampa, Idaho
January 21, 1982



Politicians blame unions

Collapse of Bunker Hill deal jolts Idaho

BOISE (UPI) — Idaho's congressional delegation and legislative leaders are blaming union officials for failure of a purchase plan for the ailing Bunker Hill Co.

But Rep. Larry Craig, R-Idaho, said he won't give up despite the "bleak" situation and will continue his attempts to keep the mine and smelting complex open and 2,100 workers on the job.

A group of investors announced Wednesday that it would not follow through on plans to buy Bunker Hill from Gulf Resources and Chemical Corp. of Houston for $50 million in cash and about $15 million in future profits because five of seven international unions rejected a wage and benefit cut proposal.

Local union members voted 695-506 in favor of those concessions on Sunday, but union leaders rejected the vote, saying there were major legal hurdles in signing the contract proposed by the investors' group.

While other state leaders attacked international unions for the breakdown, Gov. John Evans said he believed it was inappropriate to lay blame for failure of the purchase plan on either side.

"The investor group did everything they could," he said. "The International (Steelworkers of America union) just couldn't sign it (the new labor agreement) because of legal matters."

Sen. Steve Symms, R-Idaho, however, said local union members were being denied the chance to keep their jobs by "union bosses in Pittsburgh," where the Steelwokers union headquarters are located. And Sen. James McClure, R-Idaho, said he was "extremely disappointed" that the agreement fell through.

Craig and Evans, however, said they would continue working in their attempts to keep at least part of the silver, lead and zinc operation functioning.

After a meeting with several international union representatives out of Pittsburg and union attorneys for three hours Wednesday night, Craig said the labor leaders will not sign contract changes until they talk with the investors' group. But the investors have refused to negotiate with the unions, creating a "bleak" picture for the Kellogg mining community, he said.

But Craig said he had "invested too much time to let this thing go down if there's anything that can be done to save it." He vowed to continue working with union leaders in a last-ditch attempt to save jobs.

Evans said he also still held out hope for keeping Bunker Hill open, saying he had heard speculation about the possibility of decertification of the local United Steelworkers of America union. That would clear the way for the union's 1,500 member in Kellogg to accept non-union jobs at Bunker Hill.

Rep. George Hansen, R-Idaho, meanwhile, said local union members in Kellogg should have the "final say as to what affects their lives."

"I certainly hoped that with arguments within the unions, the will of the local people who are directly concerned for their jobs would prevail," he said.

Lt. Gov. Phil Batt, a gubernatorial candidate, said he was "deeply disappointed" over the breakdown, saying it was "too bad that Idaho's people were not able to shape their own destiny."

And state Senate Majority Leader James Risch, R-Boise, said the unions' refusal to honor local members' votes "deteriorate people's opinions of unions, especially on the national level."

"People generally support a democratic system of a majority vote, but that wasn't done here" he said.

SPOKESMAN-REVIEW
Spokane, Washington
January 21, 1982

Despite death knell, workers keep trying

By RITA HIBBARD
Spokesman-Review

KELLOGG, Idaho — Bunker Hill Steelworkers Wednesday kept on trying after everyone else had said the century-old mining and smelter operation was dead.

The Steelworkers and members of seven smaller unions now want to dissolve their local unions and replace them with a single bargaining association called the "United Peoples Union of the Silver Valley."

IF THEY SUCCEED, they save a town and 1,500 jobs.

Working frantically against tremendous odds, the Steelworkers arranged an emergency meeting Wednesday night with Idaho Congressman Larry Craig and United Steelworkers official Robert Petris of Pittsburgh.

Craig emerged from a recess in the meeting at 7:30 p.m. to tell reporters that Petris "seems to be very firm in his stance" not to sign the document dissolving Local 7854.

The group faces a "very, very tight deadline," Craig told reporters, adding, "We're not through yet."

Craig, who said he spoke Wednesday afternoon with Duane Hagadone, one member of a group inter-

ASKED IF THE last-minute talks could save the smelter, he said, "I sure hope so."

The Steelworkers assembled in the Kellogg union hall earlier

ested in buying the smelter, said he had been led to believe that something could be worked out."

Wednesday were made no promises.

"I can't give you any guarantees," Dale Lavigne, chairman of the task force established by Idaho Gov. John Evans to save the smelter, told the Steelworkers assembled in the Kellogg union hall.

"But we're putting all the political pressure now on one thing — to release you from this contract."

If that happens, the workers would be able to bargain independently with the investor group that until Wednesday had been trying to buy the smelter from Gulf Resources and Chemical Corp.

THE REFUSAL OF the Steelworkers' and other craft unions' international leadership to sign the contract that slashes pay and benefits has been the stumbling block preventing sale of the smelter

Steelworker Ronald Byrd, elected president of the local union Tuesday, said the union members would agree to the same terms now in the disputed contract — including a 25 percent wage cut.

The Steelworkers appeared only slightly daunted by the announcement Wednesday morning that the investor group attempting to purchase the union had pulled out.

Coeur d'Alene publisher Hagadone claimed that the local union's election of a new slate of officers and their signatures on the back-to-work agreement were of "doubtful validity" and did not meet the terms of the sale.

THE STEELWORKERS, faced with the international union's refusal to sign the contract after it was approved Sunday by the union's rank-and-file, elected a new slate of officers at a hastily called meeting at 7 a.m. Tuesday. It is the election of those officers and their agreement to return to work that Hagadone's lawyers question. . . .

THE TIMES-NEWS
Twin Falls, Idaho
January 21, 1982

Bunker Hill rejection to aid right-to-work?

BOISE (UPI) — Right-to-work legislation may have a good chance of clearing the 1982 Legislature as a result of unions' refusal to accept a Bunker Hill Co. contract proposal.

Sen. Vernon Lannen, D-Pinehurst, said Wednesday the people in his district of North Idaho would suffer greatly as a result of labor leaders' refusal to accept terms of a contract offered by a group of investors who attempted to revive Bunker Hill., the investors' group.

"It's a sad day for unions in Idano," said Lannen, a Bunker Hill security supervisor and labor supporter.

Investors' spokesman Duane Hagadone, a Coeur d'Alene newspaper publisher, said the last-ditch effort to save Bunker Hill and 1,500 jobs for union workers had failed because six of eight international unions needed to seal the pact refused to go along with wage and benefit cuts.

Hagadone said he "couldn't believe" the international unions would refuse to go along with the proposal even though the rank-and-file approved the job-saving pay cuts in a vote Sunday.

Lannen said the internationals' refusal to accept their memberships' vote would spur right-to-work supporters — and increase the chances of lawmakers approving such a measure this session.

A right-to-work law would ban labor contracts from requiring union membership as a condition of employment. Such measures have failed to gain legislative approval for the past several sessions.

While Lannen said he found no evidence that such a law would have changed the Bunker Hill situation, he said he believed the unions' actions would create an anti-labor sentiment in the 1982 Legislature that could lead to passage of the proposal.

"There have been people sitting on the fence on this issue when it's come up in the past," he said. "There's talk of right-to-work legislation again this session and I'll continue to oppose it.

"But I think what's gone on with Bunker Hill now will push those who've been on the fence to the right-to-work side."

IDAHO PRESS-TRIBUNE
Nampa, Idaho
January 21, 1982

Mining mess aids right-to-work

BOISE (UPI) — Right-to-work legislation has a good chance of clearing the 1982 Legislature as a result of unions' refusal to accept a contract proposal offered by a group of investors who attempted to revive the Bunker Hill Co., a state senator said Wednesday.

Sen. Vernon Lannen, D-Pinehurst, said the people in his district of North Idaho would suffer greatly as a result of labor leaders' refusal to accept terms of a contract offered by the investors' group.

'It's a sad day for unions in Idaho," said Lannen, a Bunker Hill security supervisor and labor supporter.

Investors' spokesman Duane Hagadone, a Coeur d'Alene newspaper publisher, said the last-ditch effort to save Bunker Hill and 1,500 jobs for union workers had failed because six of eight international unions needed to seal the pact refused to go along with wage and benefit cuts.

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THE TIMES-NEWS
Twin Falls, Idaho
January 21, 1982

Opinion

Unions engaged in 11th hour sabotage

Thanks to a few, incredibly inane union officials, the deal to save Bunker Hill has gone down the drain — literally overnight.

As a result, the livelihood of 2,100 mine and smelter workers will be lost. Northern Idaho will be dealt a devastating economic blow. Idaho will sustain a severe setback, adding to its recessionary woes.

There is only one way to describe the actions of former United Steelworkers head Ken Flatt and the union's Pittsburgh honchos: It was sabotage at the 11th hour. They stabbed Bunker Hill and Idaho in the back.

A group of private investors came within an eyelash of preventing the silver mine and complex from closing, only to have Flatt and his hired guns ambush the plans without remorse.

A great deal of credit must go to the consortium group for attempting to pull off the impossible. Leading investors Duane Hagadone, Harry Magnuson, William Pfeiffer and J.R. Simplot almost did it.

Every other aspect of this complex deal to acquire Bunker Hill, and then cut losses, had been put in place. Everywhere the investors turned, they found the needed cooperation: from creditors, from utilities, from transportation, from the state and from Gulf Resources Inc., the owners of Bunker Hill.

They even got it from a majority of the local steelworkers.

But not from Flatt and his union bosses.

Imagine. After a vote was taken on the issue of making concessions, the outcome of which was 695-506 in favor, the international union declared the vote was only "advisory" and would need final approval and further negotiations. Nothing was said about the vote being "advisory" before the balloting.

Flatt and 11 members of the local board showed their true colors and allegiance when they resigned en masse following the vote. Flatt said he couldn't live with the result.

We wonder how he'll live without a job, period.

What really gets beneath our skin is that a bunch of outsiders decided this issue for Idaho. They could care less, as an angry Sen. William Moore, R-Hayden Lake, said, for their jobs aren't on the line. What they've done is to forsake their own members.

In fact, what the "outsiders" have done may be illegal. An estimated 200 steelworkers in Kellogg say they'll file suit against the union. They surely must feel betrayed.

We fear, however, that the only people who'll "pay" for this unscrupulous act are the citizens of Idaho.

THE DALLES (OR) CHRONICLE
January 21, 1982

Bunker Hill Deal Fails

BOISE (UPI) — Right-to-work legislation has a good chance of clearing the 1982 Legislature as a result of unions' refusal to accept a contract proposal offered by a group of investors who attempted to revive the Bunker Hill Co., a state senator said Wednesday.

Sen. Vernon Lannen, D-Pinehurst, said the people in his district of North Idaho would suffer greatly as a result of labor leaders' refusal to accept terms of a contract offered by the investors' group.

"It's a sad day for unions in Idaho," said Lannen.

Investors' spokesman Duane Hagadone, a Coeur d'Alene newspaper publisher, said the last-ditch effort to save Bunker Hill and 1,500 jobs for union workers had failed because six of eight international unions needed to seal the pact refused to go along with wage and benefit cuts.

Hagadone said he "couldn't believe" the international unions would refuse to go along with the proposal even though the rank-and-file approved the job-saving pay cuts in a vote Sunday.

THE IDAHO STATESMAN
Boise, Idaho
January 22, 1982

Bunker Hill workers seek last-minute deal

Statesman News Services

While Gulf Resources & Chemical Co. officials traded jabs with union leaders Thursday over the collapse of efforts to save Bunker Hill Co. in Kellogg, the newly elected Steelworkers local president said he was working to save the company.

Ron Byrd, elected Tuesday after former union leaders resigned Sunday, said he and hundreds of other workers hoped a labor plan could be put together in time to meet today's deadline on an option to purchase the company.

Investors holding the purchase option gave up Wednesday, saying they could not get international union representatives to approve a contract agreement they said was necessary to save Bunker Hill. As a result, Gulf Resources, Houston, said it would shut down the mining and smeltering facilities as quickly as possible.

On Thursday afternoon, members of Idaho's congressional delegation sent a telegram to United Steelworkers Union President Lloyd McBride, who represents Bunker Hills's largest union, urging him to order acceptance of the Bunker Hill Co. contract.

"Only you can take the necessary action to expedite the employees' attempt to maintain their jobs," said a telegram signed by Sens. Steve Symms and James McClure and Reps. Larry Craig and George Hansen.

A Gulf Resources spokesman laid the blame for failure of the latest plan to save Bunker Hill on the United Steelworkers of America.

"I'm not sure it serves anything to characterize anybody as a bad guy," said the Gulf Resources spokesman, who asked not to be identified. But he said a proposal to buy the money-losing silver, lead and zinc producer fell through because international Steelworkers officials rejected a locally approved labor deal.

Union members at Kellogg voted Sunday to accept a contract calling for 25 percent wage cuts, more than 30 percent in pension benefits and a five-year, no-strike clause.

Cass Alvin, West Coast spokesman for the Steelworkers, said: "We resent the massive effort to place the burden on us."

Alvin said the buyers ignored the union's willingness to renegotiate a contract more favorable to Bunker Hill and instead demanded illegal unilateral cancellation of a contract that does not expire until 1983.

"The problem was not, repeat, was not, that the union was unwilling to sit down and make economic concessions to accommodate anything to make the Bunker Hill operation viable and hopefuly profitable," Alvin said.

"The problem was there is a labor agreement existing between Bunker Hill and the unions that is binding through August 1983, (which could not be unilaterally canceled.)"

Alvin also said Bunker Hill had told them the company had problems with the economics of smelting lead and zinc and that those problems had to do with supply of concentrates, not labor costs.

Byrd said attempts to get international union representatives to sign the contract offer from the investors have proved "fruitless and very frustrating."

The same, he said, is true of getting the international's approval for formation of an independent union.

The two sides in the union struggle were meeting in Spokane to discuss the issue, which has become bogged down in a myriad of legal problems, Byrd said.

" In the meantime, we are asking everyone to call the president of the United States and demand help in this matter," he said.

Byrd said the attempt is the last chance for saving the jobs of the 2,100 Bunker Hill employees.

Workers feel the failure of the international to uphold Sunday's vote may have dealt a fatal blow to international unionism in northern Idaho, he said.

"We don't want another international union in here. We got burnt by those people once already, and we're going to try to set up our own union so that it doesn't happen again," Byrd said.

He said other unions in the area have offered to do what they can to support the independent movement.

In a related action, a hearing scheduled for today in Wallace on a class-action suit filed on behalf of more than 200 Bunker Hill Co. employees has been canceled, with the issue turned over to federal court.

The suit seeks damages for workers who claim they were unfairly represented by union leaders after a vote on Sunday, when union members approved a proposed labor agreement.

Coeur d'Alene attorney Thomas Mitchell, who filed the suit earlier this week, said Thursday that the United Steelworkers of America filed a petition for removal of the matter from Idaho 1st District Court to federal court.

When the suit was filed, Mitchell obtained a temporary restraining order preventing international union representatives from interfering with the signing of agreements between the local and the investor group.

Mitchell said the change in courts does not affect the restraining order.

THE TRIBUNE
Lewiston, Idaho
January 22, 1982

Bunker Hill

Union head urged to OK Bunker Hill pact

Associated Press

BOISE — Members of Idaho's congressional delegation sent a telegram to United Steelworkers Union President Lloyd McBride Thursday afernoon, urging him to order acceptance of the Bunker Hill Co. contract at Kellogg.

"Only you can take the necessary action to expedite the employees' attempt to maintain their jobs," said a telegram signed by senators Steve Symms and James McClure and congressmen Larry Craig and George Hansen.

The development was the latest in a last-ditch effort to keep Bunker Hill in operation. The company is being closed by its parent corporation because of operating losses.

Union members at Kellogg voted Sunday to accept a contract calling for 25 percent wage cuts, more than 30 percent in pension benefits and a five-year, no-strike clause.

But local union leaders resigned Monday and regional USW officials refused to sign the contract. An Idaho investor group which was trying to buy Bunker Hill announced Wednesday it was breaking off negotiations because of the union refusal to sign the contract.

In the telegram to McBride, the Idaho officials urged McBride to order Bob Petris, regional officer at Spokane, to sign the contract.

"The future and welfare of thousands of Idaho citizens depends on your prompt compliance" with the sentiment expressed in the Sunday vote, the telegram said.

In Kellogg, Ron Byrd, elected steelworkers president in rag-tag balloting early Tuesday after union members ousted the leaders they had elected earlier, said he continued to hope that a labor plan could be put together in time for today's 5 p.m. deadline on an option to buy the smelting-mining company.

Investors holding the purchase option gave up Wednesday, saying they could not get unions involved to approve their contract agreement. Moments later, Gulf Resources & Chemical Corp. of Houston, Texas, said it would shut down the gigantic plant as quickly as possible.

Byrd said attempts to get international union representatives to sign the contract offer from the investors have proved "fruitless and very frustrating."

The same, he said, is true of getting the international's approval for formation of an independent union.

The two sides in the union struggle were meeting in Spokane to discuss the issue, which has become bogged down in a myriad of legal problems, Byrd said.

"Last night's talk didn't go worth a damn," he said Thursday. "We are hoping they will meet with us . . . and in the meantime we are asking everyone to call the president of the United States and demand help in this matter."

He said the attempt is the last chance for saving the jobs of the 2,100 Bunker Hill employees.

"We know this is our last hope. But when I was elected, I told people I would do everything I could to try and save our jobs, and that's what I'm trying to do," Byrd said.

Since he was elected, he has been unable to gain access to union records inside the union hall, he said.

"They haven't given me the keys to the office or the filing cabinets inside the hall, and I can't get at the legal papers and union records we need to help establish a new independent union," he added.

Byrd said the feeling among workers is that the failure of the international to uphold Sunday's vote may have dealt a fatal blow to international unionism in northern Idaho.

"We don't want another international union in here. We got burnt by those people once already, and we're going to try to set up our own union so that it doesn't happen again."

He said other unions in the area have offered to do what they can to support the independent movement.

"We've got the support and the backing from people from all over," he said. "A lot of people have called here and said they would do what they could to help us kill the international movement."

At a Boise news conference, Craig said he flew to Spokane Wednesday night to meet with Petris and other union officials. "Nothing of any real substance was accomplished at that meeting," said Craig.

"Mr. Petris was very hard in his opinion that they would not and could not sign that agreement without some major changes in it," said Craig. He said he thought some of the changes were legal clarifications that would not change the substance.

But Craig said he got the impression that the national union was refusing to ratify the agreement in fear that it would set a bad precedent that could affect future negotiations across the country.

He said that indicated that "the welfare of the national union dominates" over the desire to save union jobs in Kellogg.

Craig was asked if there is any hope for future negotiations to keep Bunker Hill in operation

He said he would be "extremely cautious" about raising hopes, because Kellogg residents have been led to believe the company was saved in the past "only to see their hopes dashed."

THE TIMES-NEWS
Twin Falls, Idaho
January 22, 1982

Brooks studies right-to-work

BOISE — Right-to-work legislation will be the subject of a 10 a.m. press conference today at the Capitol.

Rep. John Brooks, R-Gooding, last year's sponsor of a bill to prohibit mandatory union membership for represented workers, says he will announce his decision at the meeting on whether to reintroduce the legislation.

Thursday night, Brooks said he was still "feeling out support" before making any commitment.

Many Republican legislators believe this week's decision by national leaders of the International Steelworkers union to reject a Bunker Hill contract has led to heightened anti-union sentiment and could be the extra kick needed to pass a right-to-work bill.

Gov. John Evans, a Democrat, says he still opposes such legislation.

THE IDAHO STATESMAN
Boise, Idaho
January 22, 1982

Brooks to announce plans on right-to-work

By RENE KIMBALL
The Idaho Statesman

Rep. John Brooks, R-Gooding, said Thursday that today he will announce his decision on whether to sponsor a right-to-work bill in the House as a result of events this week involving Bunker Hill Co. unions.

House and Senate Republicans told The Statesman on Thursday that the refusal of Bunker Hill's international unions to sign a labor contract with an investment group trying to buy the Kellogg mine produced new momentum for right-to-work legislation.

Right-to-work proponents want a bill banning mandatory union membership as a condition of employment.

State AFL-CIO Director Jim Kerns said at a press conference Thursday, however, that the issues of right to work and Bunker Hill were unrelated, calling them "apples and oranges."

"One hasn't got anything to do with the other," Kerns said. He added that even if a right-to-work bill were in place in Idaho, it would not have changed events in Kellogg.

There had been predictions earlier in the legislative session that a right-to-work bill might not surface this year because proponents thought it inevitably would be vetoed by Gov. John Evans. They also said it was a bad issue for an election year.

But some legislators say the time is ripe for the legislation.

Brooks, who carried a right-to-work bill last year, said if he decided to do so again this session, he would introduce the same legislation, without amendments added in 1981. Last year's bill was tabled in the Senate.

"A lot of sentiment has really changed in the last week or so since the Bunker Hill incident," Brooks said. He said several representatives from northern and southeastern Idaho districts had approached him recently asking him to carry a right-to-work bill.

"More Democrats support it than they have in the past because of what happened up there," Brooks said, referring to Bunker Hill.

House Speaker Ralph Olmstead, R-Twin Falls, agreed that the issue was picking up steam Thursday. The refusal of international unions to sign a contract was responsible for "new momentum which it would not have had otherwise," he said.

Olmstead said there was talk among legislators backing the bill that it should be introduced in the Senate "because passage in the House is assured."

But two senators whose names had been mentioned as possible sponsors said they had no plans to introduce the bill.

"If it won't pass, what's the use of fussing with it?" said Sen. Bill Moore, R-Hayden Lake. "There won't be one coming out of the Senate; take my word for it."

Moore said Evans was a stumbling block, because he would have no choice but to veto the bill because of the backing he had received from unions. The thought among many pro right-to-work senators is that it would be better to wait and see if in another year there is a another governor who might favor the plan.

Sen. Atwell Parry, R-Melba, said there was no truth to a rumor that he might be planning to sponsor a right-to-work bill.

Parry said although he was upset that "Eastern union officials" had the final word over the fate of Bunker Hill workers, the timing for right-to-work was not good because the issue was too emotional.

He predicted a right-to-work bill would be approved by the Legislature in the future. "I would rather see it pass on its own merits for what it is."

THE IDAHO STATESMAN
Boise, Idaho
January 23, 1982

Bunker Hill option deadline passes

By MARK WARBIS
Associated Press

The deadline of an investor group's option to buy the Bunker Hill Co. mining and smelting complex in Kellogg officially expired Friday evening, but nobody seemed to care. That deadline became meaningless Wednesday when the investors notified Gulf Resources and Chemical Corp. that they were not going to exercise their $65 million option.

The decision by the investors came after a frenzy of union activity in northern Idaho's Silver Valley. That included a vote on the investor group's proposed labor contracts, approved by a vote of 695 to 506.

International representatives of the United Steelworkers of America refused to recognize the vote or ratify the contract.

The investors, who included potato baron J.R. Simplot, Wallace minihg executive Harry Magnuson and Coeur d'Alene newspaper owner Duane Hagadone, said they pulled out because they did not get signed labor contracts from all of the unions involved with Bunker Hill, and because of questions about the legality of some of those they did get.

Gulf has been closing down the plant since August. On Wednesday, Gulf issued orders to proceed with the closure of the plant, once the second-largest industrial employer in Idaho with 2,100 employees.

Meanwhile, Idaho AFL-CIO President Jim Kerns in Boise Friday said the death knell for Bunker Hill should be postponed.

"I don't think it's dead," Kerns said. He said the investor group still has an opportunity to regroup for another purchase try.

But he said any agreement would have to be legally binding. The problem with the recent round of investor-labor negotiations, Kerns said, is that they were not negotiations at all.

"They were really not bargaining sessions," Kerns said. He said Gulf Resources was the only entity with the legal right to bargain with the unions involved. The investor group knew that, Kerns said, and so offered the unions a take-it-or-leave-it proposition on wage and benefit concessions. He said the investor group knew they were taking "a very, very big gamble."

Kerns called last Sunday's vote in Kellogg an "advisory ballot." He said those words were printed on each election document.

If regional and international union leaders had signed the contracts, Kerns said, "they would have been wide open for some very vicious lawsuits."

Regarding the move to introduce right-to-work legislation in the Idaho Legislature in the wake of the union problems, Kerns said it was an attempt to punish northern Idaho union members. Open shops or independent unions in the Silver Valley "would have had no effect at all," he said.

"They're (legislators proposing right-to-work legislation) being vindictive to the union members up there," Kerns said. Attempts to pass such legislation are "union-busting" tactics, he said.

Despite the imminent closure of the northern Idaho facility, Silver Valley residents refuse to give up.

Petitions demanding that the union vote last Sunday be upheld are being circulated in Shoshone and Kootenai Counties.

Former Kellogg Chamber of Commerce President Dean Peterson said he hopes to gather 8,000 signatures on the petitions by noon Monday.

Peterson said George Tway, a spokesman from Idaho Gov. John Evans' office, has promised to get the petitions to President Reagan.

Steelworker's suit against union transferred to Boise

U.P. International

A Bunker Hill Co. employee's lawsuit alleging the international steelworkers union abandoned its duty to Kellogg members by refusing to abide by the results of a local election has been transferred from state court in Wallace to U.S. District Court in Boise, a federal court spokesman said Friday.

The suit, filed in 1st District Court by union member Arthur Aamodt, claims national representatives of the United Steelworkers of America union improperly refused to honor the Jan. 24 election results — which approved the signing of an agreement between the Kellogg local and potential buyers of the Bunker Hill mine and smelter.

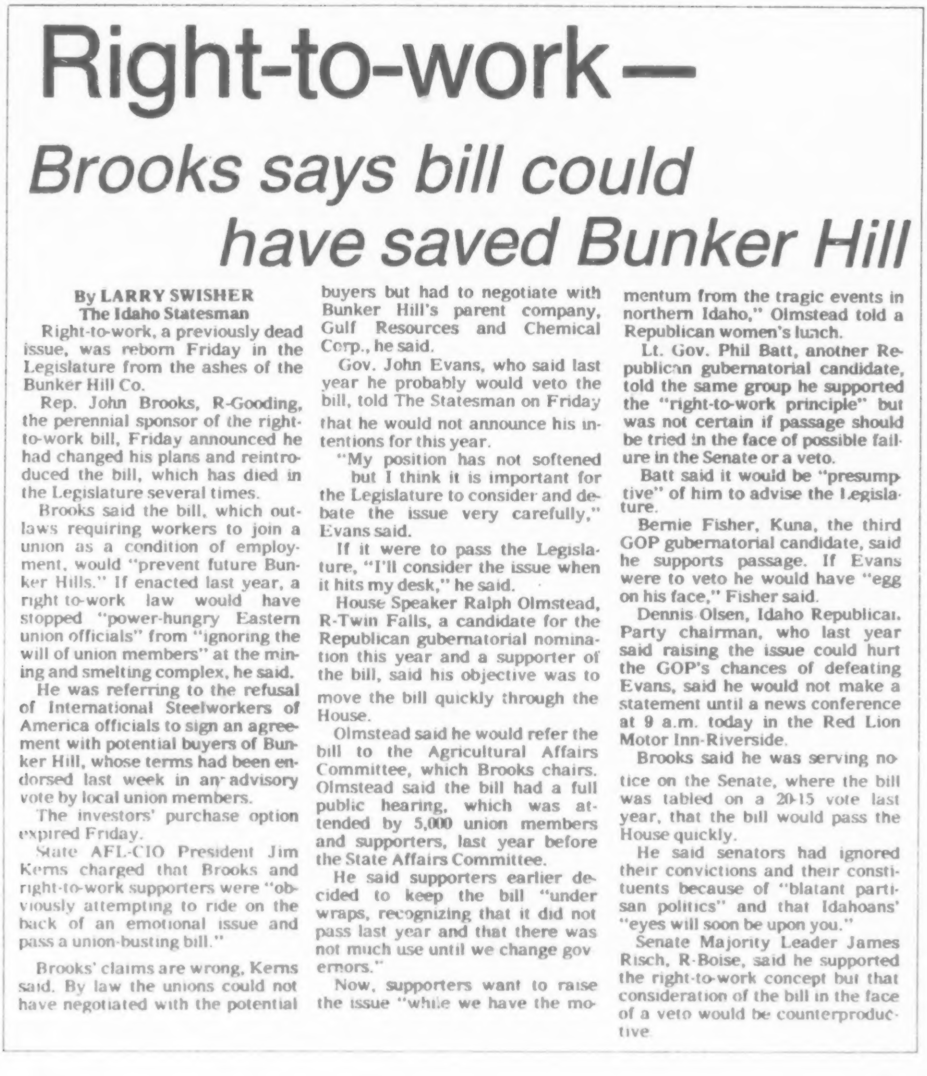
Aamodt alleged the national union action caused those potential purchasers to stop their effort to buy the mineral producer. That action, he said, will prompt complete shutdown of the operation and the layoffs of Aamodt and hundreds of other union members.

Representatives of the national union, headquartered in Pittsburgh, said earlier this week the local could not legally sign any wage or benefit agreements with people who did not actually own the company.

They also said the vote was advisory and not binding on local union officials — who resigned after the rank-and-file voted to take a 25 percent cut in wages and rollbacks in benefits to keep Bunker Hill open.

Aamodt's lawyer, Thomas Mitchell of Coeur D'Alene, said the request that the case be transferred to Boise came from the attorney for the international union, Wayne Fuller of Caldwell.

THE IDAHO STATESMAN
Boise, Idaho
January 23, 1982



Right-to-work —

Brooks says bill could have saved Bunker Hill

By **LARRY SWISHER**
The Idaho Statesman

Right-to-work, a previously dead issue, was reborn Friday in the Legislature from the ashes of the Bunker Hill Co.

Rep. John Brooks, R-Gooding, the perennial sponsor of the right-to-work bill, Friday announced he had changed his plans and reintroduced the bill, which has died in the Legislature several times.

Brooks said the bill, which outlaws requiring workers to join a union as a condition of employment, would "prevent future Bunker Hills." If enacted last year, a right to-work law would have stopped "power-hungry Eastern union officials" from "ignoring the will of union members" at the mining and smelting complex, he said.

He was referring to the refusal of International Steelworkers of America officials to sign an agreement with potential buyers of Bunker Hill, whose terms had been endorsed last week in an advisory vote by local union members.

The investors' purchase option expired Friday.

State AFL-CIO President Jim Kerns charged that Brooks and right-to-work supporters were "obviously attempting to ride on the back of an emotional issue and pass a union-busting bill."

Brooks' claims are wrong, Kerns said. By law the unions could not have negotiated with the potential buyers but had to negotiate with Bunker Hill's parent company, Gulf Resources and Chemical Corp., he said.

Gov. John Evans, who said last year he probably would veto the bill, told The Statesman on Friday that he would not announce his intentions for this year.

"My position has not softened but I think it is important for the Legislature to consider and debate the issue very carefully," Evans said.

If it were to pass the Legislature, "I'll consider the issue when it hits my desk," he said.

House Speaker Ralph Olmstead, R-Twin Falls, a candidate for the Republican gubernatorial nomination this year and a supporter of the bill, said his objective was to move the bill quickly through the House.

Olmstead said he would refer the bill to the Agricultural Affairs Committee, which Brooks chairs. Olmstead said the bill had a full public hearing, which was attended by 5,000 union members and supporters, last year before the State Affairs Committee.

He said supporters earlier decided to keep the bill "under wraps, recognizing that it did not pass last year and that there was not much use until we change governors."

Now, supporters want to raise the issue "while we have the momentum from the tragic events in northern Idaho," Olmstead told a Republican women's lunch.

Lt. Gov. Phil Batt, another Republican gubernatorial candidate, told the same group he supported the "right-to-work principle" but was not certain if passage should be tried in the face of possible failure in the Senate or a veto.

Batt said it would be "presumptive" of him to advise the Legislature.

Bernie Fisher, Kuna, the third GOP gubernatorial candidate, said he supports passage. If Evans were to veto he would have "egg on his face," Fisher said.

Dennis Olsen, Idaho Republican Party chairman, who last year said raising the issue could hurt the GOP's chances of defeating Evans, said he would not make a statement until a news conference at 9 a.m. today in the Red Lion Motor Inn-Riverside.

Brooks said he was serving notice on the Senate, where the bill was tabled on a 20-15 vote last year, that the bill would pass the House quickly.

He said senators had ignored their convictions and their constituents because of "blatant partisan politics" and that Idahoans' "eyes will soon be upon you."

Senate Majority Leader James Risch, R-Boise, said he supported the right-to-work concept but that consideration of the bill in the face of a veto would be counterproductive.

COEUR d'ALENE (ID) PRESS
January 23, 1982

editorial

Lies won't fool unions' critics

Recent events in the Bunker Hill tragedy have verified the gut feelings most Americans harbor against the big unions. And hopefully, this animosity will take shape in the passage of "Right to Work" legislation throughout the land.

Big Labor in this country has gone too far. We all know it.

Its main concern is no longer reasonable representation of its dues-paying membership, but the perpetuation of its own bureaucratic power structure at all costs.

Businesses can be destroyed, worker demands ignored, jobs sacrificed and lies told with no qualms from these self-serving big shots.

We have seen all of these crimes at Bunker Hill.

Repeatedly, the good workers of this Silver Valley giant were lied to. And the lies haven't stopped.

Now, with the union chieftains taking a beating from all sides — the public, the media and even their own members — they are telling the biggest lie of all: that "law" prevented them from signing the labor contracts with the proposed buyers.

If that were true, why were members allowed to vote on accepting the contract in the first place. If "law" prevented these officials from approving the pact, why go through the unnecessary motions of a democratic vote.

The "why" is obvious.

The unions were cocksure they had the Bunker Hill working force under thumb, that they could be manipulated, that they would never vote against the wishes of Pittsburgh.

That they had no minds of their own.

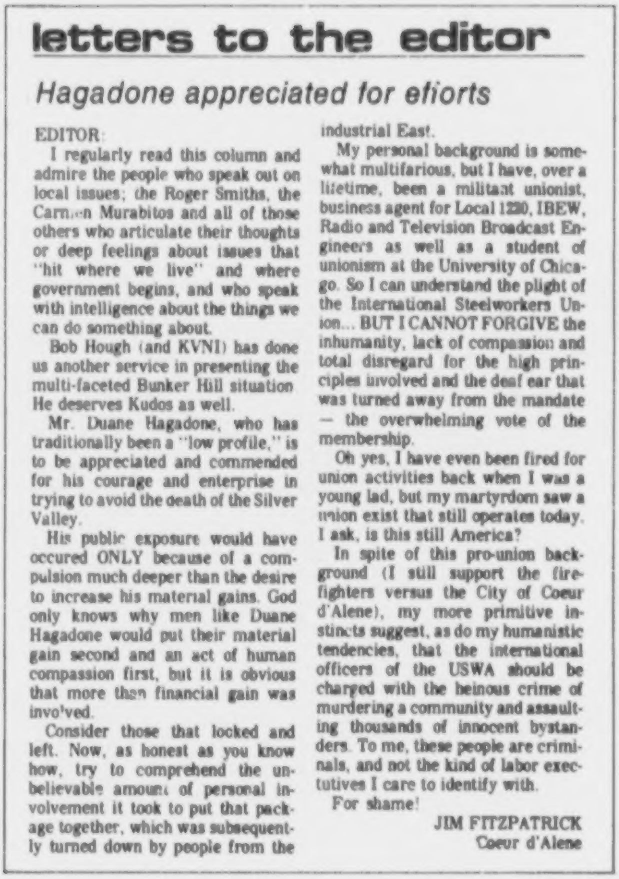
How wrong they were. How far removed from reality they are.

It's no mystery that workers would rather save their jobs rather than save face for the unions. What kind of a choice is that?

So they voted. And the unions told them they didn't care. And now they are telling bald-faced lies to cover their tracks.

But we know better. Don't we?

COEUR d'ALENE (ID) PRESS
January 23, 1982



letters to the editor

Hagadone appreciated for efforts

EDITOR:

I regularly read this column and admire the people who speak out on local issues; the Roger Smiths, the Carmen Murabitos and all of those others who articulate their thoughts or deep feelings about issues that "hit where we live" and where government begins, and who speak with intelligence about the things we can do something about.

Bob Hough (and KVNI) has done us another service in presenting the multi-faceted Bunker Hill situation. He deserves Kudos as well.

Mr. Duane Hagadone, who has traditionally been a "low profile," is to be appreciated and commended for his courage and enterprise in trying to avoid the death of the Silver Valley.

His public exposure would have occured ONLY because of a compulsion much deeper than the desire to increase his material gains. God only knows why men like Duane Hagadone would put their material gain second and an act of human compassion first, but it is obvious that more than financial gain was involved.

Consider those that locked and left. Now, as honest as you know how, try to comprehend the unbelievable amount of personal involvement it took to put that package together, which was subsequently turned down by people from the industrial East.

My personal background is somewhat multifarious, but I have, over a lifetime, been a militant unionist, business agent for Local 1220, IBEW, Radio and Television Broadcast Engineers as well as a student of unionism at the University of Chicago. So I can understand the plight of the International Steelworkers Union... BUT I CANNOT FORGIVE the inhumanity, lack of compassion and total disregard for the high principles involved and the deaf ear that was turned away from the mandate — the overwhelming vote of the membership.

Oh yes, I have even been fired for union activities back when I was a young lad, but my martyrdom saw a union exist that still operates today. I ask, is this still America?

In spite of this pro-union background (I still support the firefighters versus the City of Coeur d'Alene), my more primitive instincts suggest, as do my humanistic tendencies, that the international officers of the USWA should be charged with the heinous crime of murdering a community and assaulting thousands of innocent bystanders. To me, these people are criminals, and not the kind of labor exectutives I care to identify with.

For shame!

JIM FITZPATRICK
Coeur d'Alene

THE IDAHO STATESMAN
Boise, Idaho
January 24, 1982

Last-gasp bail-out sought for sinking Bunker

By **MARY KELTZ**
The Idaho Statesman

KELLOGG — Bunker Hill Co. officials and community leaders reportedly were working this weekend on a last-ditch effort to save the sprawling lead, zinc and silver operation.

The mining and smelting complex is nearly shut down, and most hope of reviving the company collapsed last week when a group of Idaho investors called off their effort to purchase the company.

On Saturdav, however, there were several reports that a new series of meetings had convened, although it was unclear where the meetings were being held and who the participants were.

Most of those officials, union leaders and businessmen involved in last week's attempt to purchase the firm were unavailable for comment Saturday night.

However, in Kellogg, Ralph Gilges, vice president for operations at Bunker Hill, said there was still a chance that the new rescue effort would succeed.

Gilges confirmed that the company was involved in discussions aimed at promoting a purchase agreement. But he said he did not know anything about the status or exact content of the discussions.

"I do know that talks are going on," Gilges said. He said Gerald Turnbow, vice president for public and employee relations, would represent the company in the matter.

Turnbow was not available for comment.

Rep. Larry Craig, R-Idaho, said in Boise that he also was aware of the meetings.

"The unions are meeting with attorneys at this time — attorneys for both sides," Craig said Saturday night.

But Craig said he could not comment any further because of the delicate nature of the discussions. He said everyone involved in the current talks wants to avoid raising any false hopes.

J. William Pfeiffer, one of the investors who terminated an option to buy Bunker Hill, said he was not aware of any meetings Saturday night.

However, Pfeiffer said that Dale Lavigne, a Silver Valley businessman, was attempting to arrange such meetings.

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Lavigne heads the Silver Valley Economic Task Force appointed by Gov. John Evans after Bunker Hill's parent corporation, Gulf Resources and Chemical Corp., Houston, announced Aug. 25, 1981, that the mining and smelting complex would be closed.

Lavigne, who had been working to revive the purchase effort that collapsed Wednesday, also was unavailable for comment both Friday and Saturday.

Gulf Resources Vice President Robert Bowman said he was not aware of any new series of meetings aimed at saving Bunker Hill. He said he doubts there is much chance of salvaging last week's purchase option.

"I don't think it's going to happen," he said.

Meanwhile, salaried Bunker Hill workers this week broke a self-imposed silence to endorse local efforts to secure a new labor agreement for hourly workers.

About 200 employees formed the "Bunker Hill Salaried Support Group" to speak out against five international unions that refused to accept a proposed contract approved by local union members.

The contract was proposed by an investors group that included Pfeiffer, Duane B. Hagadone, Harry F. Magnuson and the J.R. Simplot Co. of Boise.

When the union leaders rejected the agreement, the investors canceled their option to buy.

Ken Flatt, at the time president of the United Steelworkers of America Local 7854, resigned after the vote, although he was later reappointed to the job by an administrator named by the international union. (That appointment has been disputed by some local union members who had elected their own slate of officers after Flatt resigned.)

Flatt, contacted Saturday, said he was not aware of nor was he participating in any new meetings on Bunker Hill. But he said he has not given up hope that the firm can be saved.

Flatt was the only officially recognized Steelworkers leader who could be reached for comment Saturday. The Steelworkers represent about 1,500 of 1,800 union employees at Bunker Hill.

Local residents, in addition, have mounted a campaign to attract President Reagan's attention to the impending economic crisis in the Silver Valley.

"There have been a number of messages received at the White House about that situation," assistant press secretary Mark Weinberger said by telephone from Camp David, Md. He declined to say how many messages had been received.

THE KNOXVILLE (TN) NEWS-SENTINEL
January 24, 1982

How To Kill a Company

UNION OFFICIALS at a northern Idaho smelter and mining complex have given a demonstration of how to finish off an ailing industry, put colleagues out of work and disrupt a region's economy. The Bunker Hill Company, which over the past century has produced 20 percent of the nation's lead, zinc and silver, has fallen on hard times. It was announced last August that the company could no longer absorb huge operating losses and would shut down.

A group of investors said they would buy the company and keep it operating if employees, who belong to a local of the United Steelworkers, would take a 25 percent pay cut and give up seniority rights.

The union membership voted to accept the plan, which would have preserved 1500 of 2100 jobs. But union officers refused to sign the contract.

Union members then threw out the officers and voted in new ones who signed the contract. But the legality of that action was questionable because union bylaws require a 90-day waiting period before a new election, so the investors who planned to buy the company withdrew their offer.

The results: The smelter and mines will close. The loss of a $55 million-a-year payroll will devastate the economies of the mining communities of Cour d'Alene, Kellogg and Wallace. Some 2000 workers will be out of jobs.

That's a high price to pay for union-officer intransigence and inflexible union rules.

THE IDAHO STATESMAN
Boise, Idaho
January 24, 1982

GOP: Threat would have helped

Evans chided about Bunker

Associated Press

Gov. John Evans could have forced acceptance of the Bunker Hill Co. agreement by threatening to let right-to-work legislation become law in Idaho, Republican spokesman Dennis Olsen said Saturday.

"The governor failed in his duty to step in and save Bunker Hill," Olsen said at a Saturday news conference in Boise.

The latest effort to save the ailing Kellogg mining-smelting complex foundered during the week when national officials of the United Steelworkers Union refused to sign an agreement approved by Bunker Hill workers Sunday. A few days later, the Idaho investor group which was trying to buy Bunker Hill announced it was abandoning the effort.

Dennis Olsen

Olsen, the Idaho Falls attorney who is chairman of the GOP State Central Committee, said Evans missed a good chance to save Bunker Hill by threatening to let a right-to-work bill become law.

"Now, I just wonder what would have happened if Idaho's governor at the appropriate time would have called international union officials in and said, 'If you continue to take this obstructive approach, I'm going to find it very hard to not sign right-to-work legislation in Idaho,' " Olsen said.

He said Republicans last year opposed right-to-work legislation but this year support it, mainly because of the Bunker Hill situation. State Rep. John Brooks, R-Gooding, Friday introduced a new right-to-work bill in the Idaho House.

COEUR d'ALENE (ID) PRESS
January 25, 1982

Bunker Hill workers dig in for long fight against union

By RIC CLARKE
Press Staff writer

KELLOGG — A half dozen men, sprawled across benches and table tops in the United Steelworkers Union Hall, stirred from a sound sleep Sunday morning to the shuffling of chairs.

Sunday marked one full week since union employees began their 24-hour vigil over the brick building at the corner of Bunker and Hill streets.

During that week, their union hall has gone from an international union stronghold to the scene of a bitter dispute, and finally to a base of operations for an anti-union rebellion by local Steelworkers.

On Sunday, it became a place of worship. A handful of former Bunker Hill Co. employees gathered in the dimly-lit hall for a 10 a.m. prayer meeting.

Led by ministers from three local churches, the men mumbled through several verses of "Onward Christian Soldiers," then prayed for help in overcoming a Silver Valley disaster — the closure of Bunker Hill.

They prayed for their jobs, homes and families. And they asked for a change of heart from the Steelworkers International Union in Pittsburgh, Pa., so 1,500 men and women could return to work.

International union officials last week sealed the fate of Bunker Hill when they refused to sign a labor concession agreement with a group of businessmen hoping to buy the huge mining and smelting operation to keep it from closing.

The decision to not cooperate with the investor group also ran counter to the wishes of the union's local membership. Bunker's rank-and-file union employees voted Jan. 17 to go to work for the prospective buyers under the terms proposed in the labor agreement.

Since then, the local Steelworkers have been fighting a desperate battle to keep Bunker's parent company — Gulf Resources and Chemical Co. — from closing the Kellogg operation so a deal can be struck between the international union and another buyer, should one come forward.

They hope to either pressure international union officials into signing the labor agreement or to decertify Local 7854 so its members can act on their own.

Their strategy involves a telephone-telegram-petition blitz on federal labor and elected officials and court action against the international union.

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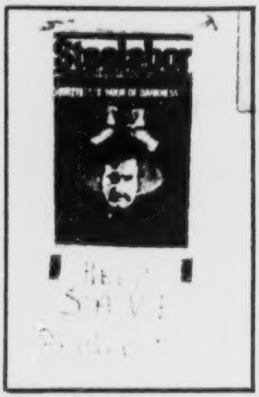
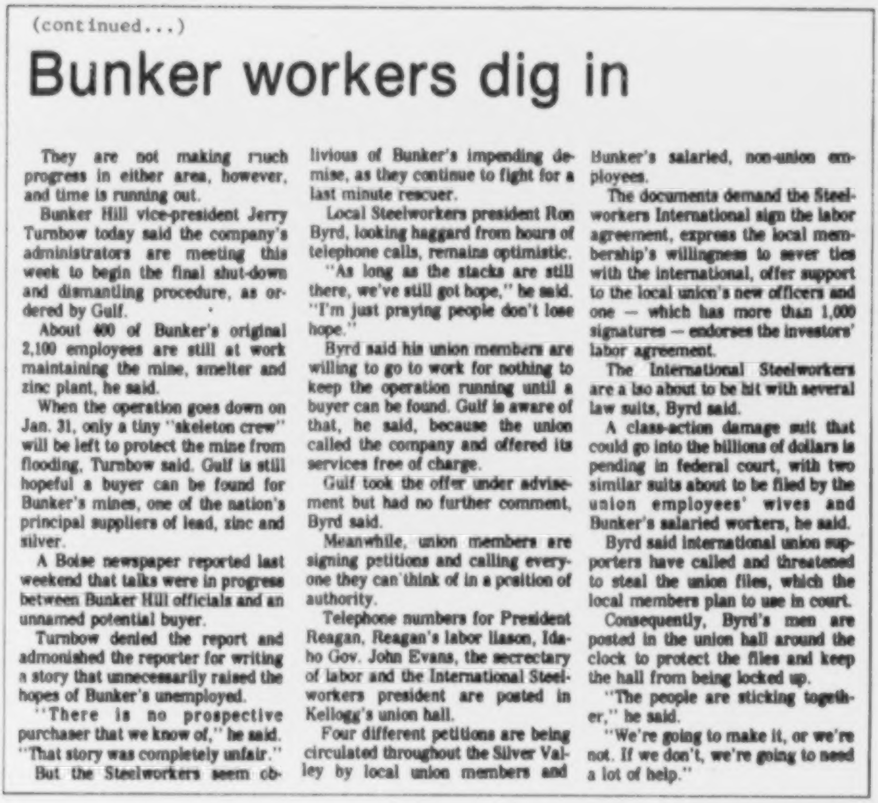
Workers protect the hall around the clock



Sign of the times



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Bunker workers dig in

They are not making much progress in either area, however, and time is running out.

Bunker Hill vice-president Jerry Turnbow today said the company's administrators are meeting this week to begin the final shut-down and dismantling procedure, as ordered by Gulf.

About 400 of Bunker's original 2,100 employees are still at work maintaining the mine, smelter and zinc plant, he said.

When the operation goes down on Jan. 31, only a tiny "skeleton crew" will be left to protect the mine from flooding, Turnbow said. Gulf is still hopeful a buyer can be found for Bunker's mines, one of the nation's principal suppliers of lead, zinc and silver.

A Boise newspaper reported last weekend that talks were in progress between Bunker Hill officials and an unnamed potential buyer.

Turnbow denied the report and admonished the reporter for writing a story that unnecessarily raised the hopes of Bunker's unemployed.

"There is no prospective purchaser that we know of," he said. "That story was completely unfair."

But the Steelworkers seem oblivious of Bunker's impending demise, as they continue to fight for a last minute rescuer.

Local Steelworkers president Ron Byrd, looking haggard from hours of telephone calls, remains optimistic.

"As long as the stacks are still there, we've still got hope," he said. "I'm just praying people don't lose hope."

Byrd said his union members are willing to go to work for nothing to keep the operation running until a buyer can be found. Gulf is aware of that, he said, because the union called the company and offered its services free of charge.

Gulf took the offer under advisement but had no further comment, Byrd said.

Meanwhile, union members are signing petitions and calling everyone they can think of in a position of authority.

Telephone numbers for President Reagan, Reagan's labor liason, Idaho Gov. John Evans, the secrectary of labor and the International Steelworkers president are posted in Kellogg's union hall.

Four different petitions are being circulated throughout the Silver Valley by local union members and Bunker's salaried, non-union employees.

The documents demand the Steelworkers International sign the labor agreement, express the local membership's willingness to sever ties with the international, offer support to the local union's new officers and one — which has more than 1,000 signatures — endorses the investors' labor agreement.

The International Steelworkers are also about to be hit with several law suits, Byrd said.

A class-action damage suit that could go into the billions of dollars is pending in federal court, with two similar suits about to be filed by the union employees' wives and Bunker's salaried workers, he said.

Byrd said international union supporters have called and threatened to steal the union files, which the local members plan to use in court.

Consequently, Byrd's men are posted in the union hall around the clock to protect the files and keep the hall from being locked up.

"The people are sticking together," he said.

"We're going to make it, or we're not. If we don't, we're going to need a lot of help."

THE IDAHO STATESMAN
Boise, Idaho
January 25, 1982

Bunker chief: Bail-out talks have ended

By JOHN ACCOLA
The Idaho Statesman

The president of Bunker Hill Co. said Sunday that the group of investors hoping to buy the smelter and mining complex had disbanded and that he knew of no last-ditch efforts to save the Kellogg facility.

"As far as I know, the option (to buy) is up and the investor group has disbanded," Jack Kendrick said. "That's the grim tale we have to tell."

No members of the investor group could be reached for comment Sunday.

On Saturday there were reports confirmed by Ralph Gilges, one of Bunker Hill's vice presidents, that a new series of meetings to save the operation had convened. Gilges also was unavailable for further comment.

Ken Flatt, president of the local International Steelworkers of America, said Sunday, "If there have been any developments, it's news to me." The steelworkers union, based in Pittsburgh, represents 1,500 of Bunker Hill's 1,800 union members.

Most of the hope of saving the company collapsed last week when the would-be investors called off their effort to purchase the complex from its parent company, Gulf Resources and Chemical Co. of Houston.

Kendrick denied Sunday any knowledge of those meetings or any new negotiations and said Gulf Resources would proceed with the completion of the shutdown announced last August.

"We appreciate your inquiries," Kendrick said when contacted at his home in Kellogg. "We just have nothing new to report."

While declining to give an exact shutdown date, Kendrick said that 400 of the original 2,100 Bunker Hill workers are still on the company's payroll and that the plant was no longer operational except for one furnace.

However, Kendrick did not rule out the possibility that the company might somehow be saved.

"I think there is always a chance, but certainly there isn't any reason to be hopeful right now," he said.

The investor group that planned to buy Bunker Hill for $65 million included Coeur d'Alene publisher Duane Hagadone, Wallace silver magnate Harry F Magnuson, the J.R. Simplot Co. of Boise and J. William Pfeiffer, a La Jolla, Calif. businessman.

Jack Kendrick

COEUR d'ALENE (ID) PRESS
January 25, 1982

Bunker Hill
Evans blamed for failure

BOISE (UPI) — Gov. John Evans has been blamed by a Republican Party official for the failure of an attempt by an Idaho investors' consortium to buy the troubled Bunker Hill Co.

Idaho GOP Chairman Dennis Olsen charged that the involvement of United Steelworkers of America officials caused the purchase efforts to collapse last week — and he said Evans could have helped the deal go through if he had put pressure on the union leaders to stay out of the way.

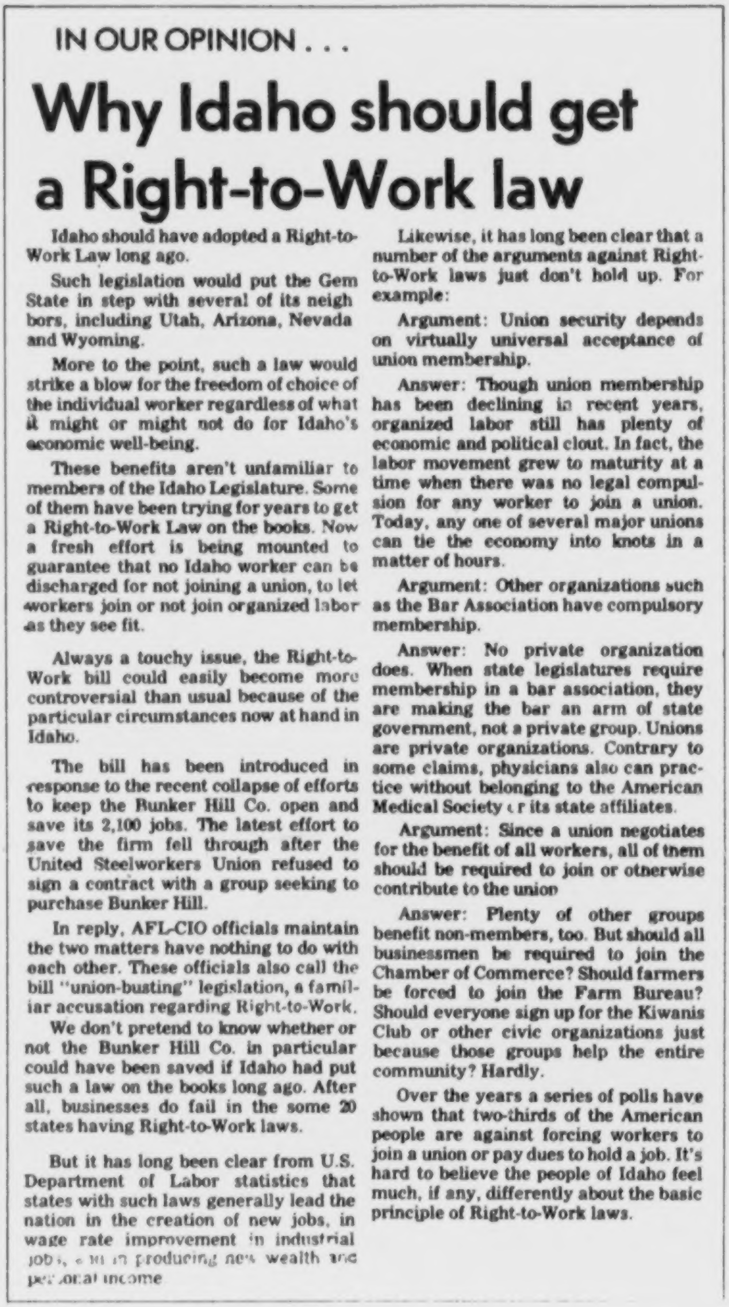
Olsen said the refusal of union officials last week to certify the membership's vote to approve the proposed purchase also has led party executives to reverse gears and support efforts to pass a right-to-work law.

A right-to-work bill introduced last year did not receive the blessing of the GOP Central Committee. Consequently, several Republican senators teamed with Democrats to kill it.

But Olsen said at a news conference Saturday that the party will not stand in the path of this year's right-to-work bill, which was introduced Friday. Its sponsor, Rep. John Brooks, R-Gooding, said he decided to introduce the bill because of the Bunker Hill events.

An investors' group said last week it was dropping plans to take an option from Gulf Resources & Chemical Corp., Houston, to purchase the silver, lead and zinc producer for $65 million. Union leaders has vetoed the membership vote because they believed workers were being forced to accept excessive wage and benefits cuts.

THE DESERET NEWS
Salt Lake City, Utah
January 26, 1982



IN OUR OPINION . . .

Why Idaho should get a Right-to-Work law

Idaho should have adopted a Right-to-Work Law long ago.

Such legislation would put the Gem State in step with several of its neighbors, including Utah, Arizona, Nevada and Wyoming.

More to the point, such a law would strike a blow for the freedom of choice of the individual worker regardless of what it might or might not do for Idaho's economic well-being.

These benefits aren't unfamiliar to members of the Idaho Legislature. Some of them have been trying for years to get a Right-to-Work Law on the books. Now a fresh effort is being mounted to guarantee that no Idaho worker can be discharged for not joining a union, to let workers join or not join organized labor as they see fit.

Always a touchy issue, the Right-to-Work bill could easily become more controversial than usual because of the particular circumstances now at hand in Idaho.

The bill has been introduced in response to the recent collapse of efforts to keep the Bunker Hill Co. open and save its 2,100 jobs. The latest effort to save the firm fell through after the United Steelworkers Union refused to sign a contract with a group seeking to purchase Bunker Hill.

In reply, AFL-CIO officials maintain the two matters have nothing to do with each other. These officials also call the bill "union-busting" legislation, a familiar accusation regarding Right-to-Work.

We don't pretend to know whether or not the Bunker Hill Co. in particular could have been saved if Idaho had put such a law on the books long ago. After all, businesses do fail in the some 20 states having Right-to-Work laws.

But it has long been clear from U.S. Department of Labor statistics that states with such laws generally lead the nation in the creation of new jobs, in wage rate improvement in industrial jobs, and in producing new wealth and personal income.

Likewise, it has long been clear that a number of the arguments against Right-to-Work laws just don't hold up. For example:

Argument: Union security depends on virtually universal acceptance of union membership.

Answer: Though union membership has been declining in recent years, organized labor still has plenty of economic and political clout. In fact, the labor movement grew to maturity at a time when there was no legal compulsion for any worker to join a union. Today, any one of several major unions can tie the economy into knots in a matter of hours.

Argument: Other organizations such as the Bar Association have compulsory membership.

Answer: No private organization does. When state legislatures require membership in a bar association, they are making the bar an arm of state government, not a private group. Unions are private organizations. Contrary to some claims, physicians also can practice without belonging to the American Medical Society or its state affiliates.

Argument: Since a union negotiates for the benefit of all workers, all of them should be required to join or otherwise contribute to the union

Answer: Plenty of other groups benefit non-members, too. But should all businessmen be required to join the Chamber of Commerce? Should farmers be forced to join the Farm Bureau? Should everyone sign up for the Kiwanis Club or other civic organizations just because those groups help the entire community? Hardly.

Over the years a series of polls have shown that two-thirds of the American people are against forcing workers to join a union or pay dues to hold a job. It's hard to believe the people of Idaho feel much, if any, differently about the basic principle of Right-to-Work laws.

TRI-CITY HERALD
Pasco-Kennewick-Richland, Washington
January 28, 1982

New union sought for Bunker Hill

KELLOGG, Idaho (AP) — A union official elected during an unsuccessful effort to save the Bunker Hill Co. has launched a $25,000 fundraising campaign to form the Silver Valley People's Union.

Ron Byrd said the money will be used in legal efforts to decertify Local 7854's charter with the United Steelworkers of America and establish a new union.

Statewide, unemployment in Idaho during the past three months has been at its highest rate in 21 years — 7.8 percent.

Most economists agree the major reason for the high rate is declining demand for wood and metals produced in northern Idaho.

Local union members and national leaders disagreed earlier this month over handling of a vote on a labor agreement with potential investors in Bunker Hill.

Byrd was elected president of the local after old leaders resigned, were reinstated and then ousted in an emergency meeting called by dissenting union members.

The investor group, which had obtained a $65 million option to buy the northern Idaho mining and smelting complex, offered a labor pact calling for massive cuts in pay and benefits. The investors said the cuts were needed for the sale to go through.

Bunker's parent, Gulf Resources & Chemical Corp., decided in August to close the plant and ordered the gradual shutdown of the complex — putting 2,100 employees out of work.

In a vote on the proposed labor pact, union members voted 695-508 in favor, but national leaders refused to sign the documents, saying the vote was advisory and the agreements illegal.

The investor group then pulled out and Gulf ordered a complete shutdown.

Reports of renewed interest by the investor group and potential new buyers have surfaced daily since then.

One Democratic Idaho senator, who asked to remain anonymous, told The Associated Press on Wednesday that the investor group still plans to buy the plant after it is shut down and Idaho has passed right-to-work laws.

A spokeswoman for Coeur d'Alene businessman Duane Hagadone, one of the original investor group members, denied any such plans and said it could be "chalked up to rumor."

With the Bunker Hill Co. all but closed, unemployment in northern Idaho jumped to 11 percent in December, says Idaho employment analyst Pat Callahan.

That meant 5,880 members of the civilian work force of 48,520 in the state's five northern counties were out of work, she said.

FEBRUARY 15, 1982

What Price Victory?

The national leadership of the United Steelworkers union has achieved a victory after a protracted and bitter dispute with members of one of its locals.

As a result, more than 1,500 jobs are being lost at a smelting and mining complex in northern Idaho, and the regional economy is being devastated by the disappearance of an annual payroll of $55 million.

Some victory.

The incident is a sad example of how the well-being of rank-and-file union members can be subjugated to the desire of a remote leadership to demonstrate its authority.

The dispute arose when a consortium of Idaho investors sought to purchase the money-losing Bunker Hill Mine Co.

The investors believed that they could operate at a profit in a depressed metals market if workers agreed to certain contract revisions that would cut costs 25 percent.

A substantial majority of employees voted to accept the terms to save their jobs. But the United Steelworkers national leadership refused to sign the agreement.

The union argued that the investors' group lacked legal standing to alter union contracts and that the terms proposed were unacceptable in any event.

The purchase option then expired, and the shutdown continued. Only 50 workers are still on the job, maintaining equipment that eventually will be sold.

Leaders of the United Steelworkers union say they are not intransigent and that they have made concessions to help other companies remain in business.

The former employees of the Bunker Hill Mining Co. and the residents of their three communities are the best judges of that.

Washington Report - Volume 3, Number 28

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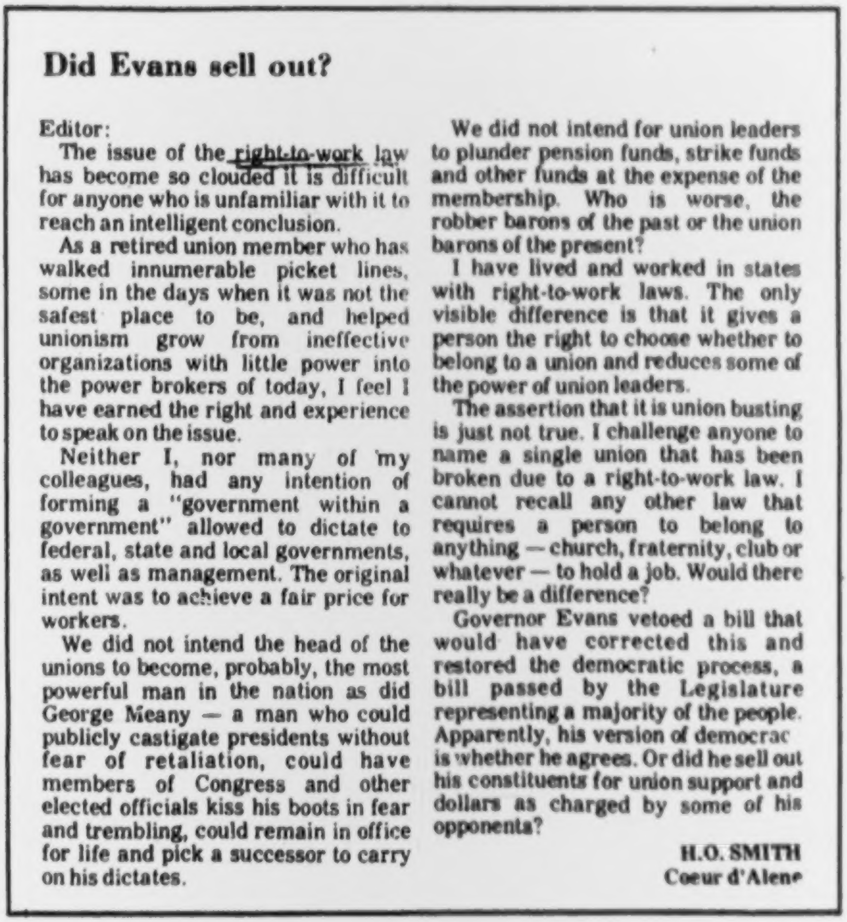
National Review
New York, New York
February 19, 1982

THE WEEK

■ The United Steelworkers of America put five thousand people out of work last month, although if you haven't heard about it, it's not surprising: the media are resolutely splicing unions out of their unemployment coverage, and no major newspaper or network has picked this story up. What happened is that, faced with a collapsing market and rising costs, the Bunker Hill Mining Company in Shoshone County, Idaho decided to shut down in January. A group of investors offered to buy the company, if the workers would make concessions in pay and benefits; which concessions the members of the United Steelworkers local voted to make in order to save their jobs. The United Steelworkers of America, however, refused to sign the agreement—and the investors backed out. The outraged union members have threatened their hierarchs with a class-action suit, and have tried to revoke their union charter, but without success. Unemployment is expected to reach 50 per cent in Shoshone County, Idaho.

THE KELLOGG (ID) EVENING NEWS

February 26, 1982



Did Evans sell out?

Editor:

The issue of the right-to-work law has become so clouded it is difficult for anyone who is unfamiliar with it to reach an intelligent conclusion.

As a retired union member who has walked innumerable picket lines, some in the days when it was not the safest place to be, and helped unionism grow from ineffective organizations with little power into the power brokers of today, I feel I have earned the right and experience to speak on the issue.

Neither I, nor many of my colleagues, had any intention of forming a "government within a government" allowed to dictate to federal, state and local governments, as well as management. The original intent was to achieve a fair price for workers.

We did not intend the head of the unions to become, probably, the most powerful man in the nation as did George Meany — a man who could publicly castigate presidents without fear of retaliation, could have members of Congress and other elected officials kiss his boots in fear and trembling, could remain in office for life and pick a successor to carry on his dictates.

We did not intend for union leaders to plunder pension funds, strike funds and other funds at the expense of the membership. Who is worse, the robber barons of the past or the union barons of the present?

I have lived and worked in states with right-to-work laws. The only visible difference is that it gives a person the right to choose whether to belong to a union and reduces some of the power of union leaders.

The assertion that it is union busting is just not true. I challenge anyone to name a single union that has been broken due to a right-to-work law. I cannot recall any other law that requires a person to belong to anything — church, fraternity, club or whatever — to hold a job. Would there really be a difference?

Governor Evans vetoed a bill that would have corrected this and restored the democratic process, a bill passed by the Legislature representing a majority of the people. Apparently, his version of democrac is whether he agrees. Or did he sell out his constituents for union support and dollars as charged by some of his opponents?

H.O. SMITH
Coeur d'Alene

THE WALL STREET JOURNAL
March 15, 1982

Steelworkers In Idaho Bitter At Union Stand

By Erik Larson
Staff Reporter of The Wall Street Journal

KELLOGG, Idaho—An investor group's plan to restore Bunker Hill Co. to operation finally failed last month—and many here in the Silver Valley say the United Steelworkers of America sacrificed their own local to make the plan fail and avoid setting a damaging labor precedent.

The clash between the union and the investors, and between the rank and file and their leaders, received little national attention. But it turned this mining town inside out. The leader of a dissident "peoples" local received several death threats. A group of workers filed a suit against the Steelworkers that just won certification as a class-action suit in Boise federal court. Angry politicians very nearly made right-to-work legislation the law in Idaho. The bitterness continues to drift through this scarred and gray valley. "Bunker Hill is dead and buried," says Eva Sullivan, a former official of Steelworkers Local 7854, "and it's a shame, because it didn't have to be that way."

The incidents that polarized this town occurred in mid-January, about a week after the investors proposed their labor agreement to the Steelworkers and six smaller AFL-CIO craft unions that also represented Bunker workers. The investment consortium consisted of J. William Pfeiffer, a La Jolla, Calif., publisher, two north Idaho mining companies, and three prominent Idaho businessmen: Harry Magnuson, of Wallace, Idaho; Duane Hagadone, Coeur d'Alene, Idaho, newspaper publisher, and Jack Simplot, head of a potato-processing empire. They had an option to acquire the Bunker Hill mining and smelting operations here from Gulf Resources & Chemical Corp., which had earlier closed them because of high losses and a shortage of raw materials to process.

Major Contract Changes

Their labor proposal, part of their plan to rescue Bunker Hill and save about 1,500 of its 2,100 jobs, wasn't designed to warm the heart of a union man. It called, in part, for a 25% cut in wages and a major overhaul of seniority practices. From the start, the investors said they wouldn't bargain on the contract and didn't have time to talk anyway—the deadline for expiration of their option was then only a week off. Union leaders call the proposal an ultimatum. "It was just a big step backward after 40 years of collective bargaining," says a Steelworkers spokesman in Pittsburgh, Pa. "I mean, no can do."

The steelworkers and craft unions reviewed the proposal at two meetings on Saturday, Jan. 16, and their leaders came away convinced that their members would soundly defeat the proposal in a vote the next day. Kenneth Flatt, president of the local, says he was certain that 85% of the union members were opposed to the plan. He was wrong. The workers voted [illegible] to [illegible] in favor of the agreement; immediately afterward, Mr. Flatt and the other local officers resigned.

Many here in the Silver Valley, including the investors, say the officers were pressured to resign so that the international could, in accord with its constitution, appoint an administrator and bring the local under direct control from Pittsburgh. "No way in hell," says Mr. Flatt; another officer, Lawrence Hansen, agrees. But another, Mrs. Sullivan, says the officers were advised to resign by the international. "The vote wasn't counted 15 minutes before they (international representatives) made sure our names were on that paper (a letter of resignation)," she says.

A Bad Precedent?

The Steelworkers would have had reason for taking such a dramatic step, according to the investment group. Acceptance of the labor proposal could have set a precedent capable of undermining other giveback talks, such as those then under way with Kaiser Aluminum & Chemical Corp. at its nearby Trentwood, Wash., aluminum rolling mill. "From their standpoint, I think they were fearful that if they did something here with Bunker Hill, they'd set a precedent for somewhere down the road," says Mr. Magnuson, one of the investors. The Steelworkers spokesman counters that the union views "each of these situations on its own merits."

The day after the vote—Monday, Jan. 18—the deadline for signing the labor agreement passed without a single union signing it. An administrator, Lavern Melton, was appointed to take control of the union that morning; he immediately reappointed the officers who had resigned. "I just thought that I needed the assistance of qualified people," he says. He retained control.

That night, workers, angered by the seeming disregard for their vote, descended on the union hall and elected a dissident board of officers. Later that week, Arthur Aamodt, a Steelworkers member, filed suit in state court asking $750,000 in damages for each worker because of the union's refusal to heed the vote. The suit was later transferred to federal court in Boise, where a judge last week certified all the members of Local 7854 as being eligible to file to become plaintiffs in the case.

Some Takers

The investors extended their deadline to Tuesday. This time they got some takers. The leaders of the six craft unions, and international representatives of two of them, signed the agreement. The rebel officers did too, although the investors' labor attorney concluded they weren't legally empowered to sign for the local. The following day, Wednesday, even Mr. Flatt came in to sign.

But the investors still needed the blessings of the Steelworkers international. They called off their rescue plan.

Hopes for the plan were renewed briefly in February, but these were dashed. Now workers here are slowly beginning to drift off in search of work in Nevada, Wyoming, Utah and elsewhere. Consumer loan delinquencies are increasing, according to one bank. And some civic leaders look ahead to June for the harshest impact of the closure. By then, savings accounts will have dwindled, and the school year will have ended. More residents may then decide to pull out, says Dale Lavigne, chairman of the defunct Silver Valley task force, which had been commissioned by the state's governor to help find buyers for Bunker Hill. "That's my feeling of when the real crunch is going to begin," Mr. Lavigne says.

But still there is stubborn optimism here. Rumors that other major companies are interested in Bunker Hill are common, and there is a fundamental doubt that Bunker Hill, here for so long, will ever actually disappear. Says Mr. Melton, the administrator for Local 7854: "I have a feeling that when that wrecking ball finally hits the heart of that place, the ball is going to crack and the building is going to stay standing."

THE WASHINGTON POST
March 16, 1982

New Battle of Bunker Hill: Union Surrenders All Jobs

By Jay Mathews
Washington Post Staff Writer

KELLOGG, Idaho—Francis Heck sits slumped in the small living room of his tidy, two-story yellow house near Rose Lake. He is resting from a 3,000-mile, five-state trek in which he slept in his car, filled out countless job applications and found openings nowhere.

Fatigue and resignation have dampened some of his anger. But mention the events of Jan. 17, 18 and 19 and it all pours back into his voice—the frustration and astonishment when he discovered that his union was going to keep him and 1,500 of his coworkers from returning to their jobs at the Bunker Hill Co., and turn Kellogg into a ghost town.

As the nationwide recession deepens, workers and unions in the automobile and other industries are staving off unemployment by accepting pay freezes or cuts, but when workers tried that in this town that once produced a quarter of the nation's refined lead, zinc and silver, their union wouldn't let them.

The bitterness of the remarkable clash between the men of Bunker Hill and the United Steelworkers union poisons the atmosphere here now as severely as the fumes that poured for years out of Bunker Hill's 715-foot-high lead mill smokestack.

"It should never have happened. It was stupid. It was dumb," Heck said.

On Jan. 17, Heck and his fellow workers at the mine and refining plant thought they had saved the troubled company by voting to accept 25 percent pay cuts and go to work for a group of local investors who promised to reopen the plant that had closed just two weeks before.

On Jan. 18, they learned that the steelworkers union leadership had refused to honor the workers' vote. The union's leaders insist they saved their workers from a bad contract, and they still hope Bunker Hill will reopen with the help of a new buyer.

But that is no longer the prevailing opinion in Kellogg. Gary Beck, manager of the Idaho department of employment office here, said, "This town almost went up in an explosion" of worker violence the day the vote was overruled. An avalanche of anti-union feeling erupted in what had been a heavily union town, but is now one more casualty of the economic blight that low demand for minerals and lumber have brought to the lovely hills of the northwestern United States.

Kellogg, a one-industry town with a population of 3,600, could vanish. Beck said his office normally processes 300 or 400 unemployment claims this time of year. Instead, he has 1,600, and with the price of silver at its lowest point in two years, he expects many more.

Dixie Lee Laehn, wife of a 10-year veteran of the Bunker Hill plant, paces around her living room a few blocks from the unused company rail trestles, still furious over what she feels the steelworkers union has done to the town that has been her home.

"When a majority rule no longer counts in America, we're in deep trouble. We may as well pack it up and head for the Soviet Union," Laehn said. "We're fighting our guts out here just to survive. And big shots clear back in Pittsburgh are using us as an example that unions are Big Brother."

Laehn, 37, a former Army nurse, finds money so tight she has had to cut off her telephone and put to sleep five pet dogs, many left by friends who have already moved out of the area. She and her husband, Clifford, took a bus to Spokane about 70 miles away to look for jobs. They were amazed to find the bus full.

"I wondered, were people doing so well they could take vacations? But when you get to talking to them, you find out they are people who are just crawling from one town to the next, looking for work . . . and just think that my husband and all those others could have still had jobs here."

Clifford Laehn is a small, energetic man with a few teeth missing and a tendency to let his wife do the talking. He is restless. Each morning he rises at 3:30 to help deliver the local paper, getting in return only a free subscription and a sense of having accomplished something that day.

When the Laehns' daughter, Melanie, 11, finishes the spring term at the Silver Valley Baptist School, the family plans to head for the Sun Belt—"Denver, Phoenix, whatever places have the lowest unemployment rates," Dixie Lee Laehn said. Francis Heck is heading that way also in a new job search through Nevada, Arizona, New Mexico and Texas. Clifford Laehn made $30,000 last year. Heck made about $26,000. Both must now live on $145 a week in unemployment benefits, the equivalent of $7,500 a year.

Kellogg businessmen like Dale Farlee, owner of the Silverhorn Motor Inn, meet regularly now to think of ways to save the town. Farlee said his own business has declined about 33 percent, but his group, the Greater Kellogg Development Corp., has a nibble for a "major aircraft stamping plant" to be established here. Another group of small merchants, Silver Valley Forever, has suggested improving the local ski run, once called "Jackass" but rechristened "Silverhorn," or building some sort of theme park to attract tourists.

The town sits on Interstate 90, the most direct road from Seattle to Chicago, seemingly a natural spot for a thriving business. But the almost abandoned Bunker Hill plant in the center of town is an eyesore of rusting metal and black slag heaps. Fire and pollution have denuded hills on either side of the narrow valley. A first-time visitor wonders if the raw look is natural for a mountain town in winter, but Beck explains: "The smelter has so polluted the ground that hardly anything will grow."

Bunker Hill had been known for the loyalty of its employes, who stayed with the work there longer than at most mine and smelter operations. When the bulk of the workers was dismissed Dec. 31, Beck said, "I had more than 60 or 70 people in here with an average of 30 years with the company. It was something to see."

It was Aug. 25 that Clifford Laehn came out of the plant and heard that Gulf Resources and Chemical Corp., shaken by the plant's losses, could not find a buyer and was going to close it. "I just sat in my car and everything just left me," he said. "It was the loneliest, emptiest feeling I've ever felt in my life."

By November, a group of local investors led by Duane Hagadone, a publisher and real estate investor based in nearby Coeur d'Alene, was trying to buy Gulf's interest in the plant. Bunker Hill would cost about $65 million, but losses for 1982 were projected at about $40 million. The investors could not control the volatile prices on the metal markets. They could only finance the deal if they negotiated a substantial cut in labor costs.

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(continued...)

They presented the workers with a five-year plan that would have meant an initial 25 percent cut in wages and benefits for many, weaken seniority rules and provide jobs for only about 1,500 of the plant's 2,100 workers.

The leaders of United Steelworkers of America Local 7854 recommended against it. But at a climactic vote the night of Jan. 17, members of the nine plant craft unions, including the steelworkers, voted 695 to 506 to accept the local investors' proposal. Many went home to celebrate, thinking they had saved their jobs. They were stunned the next day when they turned on their radios to hear that the local's newly appointed administrator, Lavern Melton, had refused to sign the agreement. The investors had no legal labor agreement which they could show to banks planning to finance the purchase, and the deal was dead.

"When I heard that my vote didn't count, it took me half an hour to get to the union hall to find out why," Heck said. An angry crowd had gathered outside and was berating Melton as sheriff's deputies watched nervously for any outbreak of violence. "Get it signed and get it over there," someone shouted at Melton. He replied: "We're not signing a blank check."

"Go back to Pittsburgh!" someone said. Melton pointed out that he was from Wallace, not far away. "Your soul is Pittsburgh, not this valley. They own you. They own your soul," a member of the crowd shouted.

Finally the workers were allowed into the union hall for an informal meeting and a flamboyant official from the Pittsburgh headquarters, Andrew Coban, addressed the throng. "I don't care if you starve me, kill me, castrate me, rape me. It just doesn't matter," Heck said Coban told them. "I'm not initialing those contracts."

Heck recalls he kept "yelling and screaming at union officials. I got really, really involved, which I seldom do." But nothing changed. The unhappy workers voted in a new slate of local officers, and the new officers signed the five-year wage proposal. But attorneys for the Hagadone group concluded that would not be enough. The existing labor agreement at the plant was with the steelworkers, and the hasty election of new officers could easily be overturned in court.

Robert Petris, the western district director for the Steelworkers Union, said any suggestion the union leadership caused the workers to lose their jobs "is a bunch of bull." He said the union leadership made it clear from the start that the Jan. 17 vote was only advisory. The union leadership, he said, had to have a chance to negotiate a contract with the Hagadone group before they could sign anything. Instead, the union was presented with a take-it-or-leave-it offer that weakened health and pension benefits under the contract with Gulf, Petris said.

Hagadone and many of the displaced Bunker Hill workers argue the union leadership felt accepting a 25 percent pay cut in Kellogg would hurt in negotiations elsewhere. "The only conclusion we have drawn is that the language we had proposed would set a precedent that they could not live with for the balance of their membership," Hagadone said.

Petris and Melton say they have saved their members from a bad contract and hold out the hope that new investors with better proposals will materialize. Martin Baral, an Australian who serves as managing director of Expo Oil Co., said his firm is considering reopening Bunker Hill and finds the Steelworkers' representatives "most helpful and businesslike."

But Robert Bowman, a vice president for Gulf in Houston, Tex., said initial contacts with Expo Oil have not developed into formal negotiations.

Meanwhile, other mines in the area continue to lay off workers and even those job-seekers who travel far beyond Idaho come back empty-handed.

Heck's two-week trip took him to an aluminum plant in Goldendale, Wash., an aluminum plant in Dalles, Ore., a pumice-crushing plant in Bend, Ore., a shale mine in southern Idaho, two mining companies in Salt Lake City, oil fields in Evanston and Rock Spring, Wyo., a mining company in Green River, Wyo., and an oil field in Caspar, Wyo.

"They all said no," Heck said. A private employment officer in Denver said they would have charged $2,500 to $3,000 to find a job for someone with Heck's experience as an operator of overhead cranes and other equipment. "I told them to stuff it," he said.

Lillian Heck sells cosmetics door to door, and with some part-time teaching and weight watcher class instruction can make as much as $9,000 in a good year. But she said she is as eager to move on as her husband is.

"A lot of people are moving back with their parents," Heck said. "But I have a lot of pride. I think I'll tax all my resources before I do that . . . and I'll try to make sure I'm never in a place where a union can do this to me again."

March 4, 1982

To whom it may concern:

This letter shall serve to advise those concerned that the tardiness of this report is due to the fact that a rump group took over the Union hall and offices on or about January 18, 1982 and held the hall until on or about February 1, 1982. Further, after being allowed to return to the hall the officers were harassed by someone breaking the windows with beer bottles and the hall was picketed by members of the rump group.

Sincerely yours,

Lavern A Melton

Lavern A. Melton
Administrator, Local 7854
United Steelworkers of America

United Steelworkers of America
AFL-CIO-CLC
FIVE GATEWAY CENTER, PITTSBURGH, PA. 15222

Lloyd McBride
International President

March 8, 1982

MAR 11 1982

[illegible] 17 [illegible]

Ieva Bradley, Chief
Section of Technical Assistance
and Education
U. S. Department of Labor
200 Constitution Avenue
Washington, D. C. 20216

Dear Ms. Bradley:

We are enclosing for your records an initial report for the following Local Union:

L. U. No.	District No.	Trustee	BLMR File No.
7854	38	Lavern Melton	068741

Sincerely yours,

Lloyd McBride
President

TRUSTEESHIP REPORT FORM LM-15

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT—FILE TWO COPIES

Office of Labor-Management and
Welfare-Pension Reports
U.S. Department of Labor
Washington, D.C. 20210

1. Type of Report:
☒ Initial (Complete both sides)
☐ SEMIANNUAL FOR PERIOD ENDING: Month ___ Day ___ Year ___

2. LM File No. 068741

3. Date Trusteeship Established: January 18, 19

4. Full name and address of reporting labor organization which has assumed trusteeship, include ZIP Code

United Steelworkers of America
Five Gateway Center
Pittsburgh, PA 15222

5A. Full name and address of subordinate labor organization in trusteeship, include ZIP Code

Local Union 7854, District 38
Lavern Melton, Trustee

5B. City and State where organization under trusteeship is chartered

North Hill Street
Kellogg, Idaho 83837

5. Any other address where records necessary to verify this report are kept, include ZIP Code

7A. Check applicable reasons for establishing or continuing the trusteeship

☐ A. To correct corruption or financial malpractice
☒ B. To assure the performance of collective bargaining agreements or other duties of a bargaining representative
☐ C. To restore democratic procedures
☐ D. Other (Specify)

7B. List provision(s) of constitution which specifically authorizes trusteeship

Article IX

8. Give detailed statement which explains each reason checked above. If additional space is needed, attach sheets to this report. (See instructions)

In order to assure the performance of collective bargaining agreements or other duties of a bargaining representative, we request Local Union 7854 be placed under Administratorship and Lavern Melton appointed Administrator over the affairs of this Local Union.

9. During the period covered by this report, (A) was there a convention or other policy determining body to which the subordinate labor organization sent or would have sent delegates if not in trusteeship, or (B) was there an election of the officers of the labor organization assuming the trusteeship?

(A) ☐ Yes ☐ No
(B) ☐ Yes ☐ No

If the answer to either (A) or (B) is "Yes," complete Part A or B as applicable, of the schedule on selection of delegates and officers, Form LM-15A, of this packet, and attach to this report.

VERIFICATION AND SIGNATURE

Each of the undersigned authorized officers of the labor organization assuming the trusteeship declares, under penalty of law, that all of the information in this report, including the attachments incorporated therein or referred to in any part of this report, has been examined by him and is, to the best of his knowledge and belief, true and complete.

Signature of president of labor organization assuming trusteeship (If other title, cross out and write in correct title.) Lloyd McBride	Signature of treasurer of labor organization assuming trusteeship (If other title, cross out and write in correct title.) Frank S. McKee
Where and when signed (City and State) (Date) Pgh Pa - 3/8/82	Where and when signed (City and State) (Date) Pgh Pa - 3/8/82
Signature of trustee of subordinate labor organization (If other title, cross out and write in correct title.) Lavern A Melton ~~Trustee~~ Administrator	Signature of trustee of subordinate labor organization (If other title, cross out and write in correct title.)
Where and when signed (City and State) (Date) Kellogg, Idaho March 4, 1982	Where and when signed (City and State) (Date)

Item No	LM-2 Item		Sch			No	Item		Sch	
10	19	Cash on hand		$		20	29	Accounts payable		$
11	20	Cash in banks		[illegible]	[illegible]	21	30	Loans payable	6	
12	21	Accounts receivable				22	31	Mortgages payable		
13	22	Loans receivable	1			23	32	Other liabilities	4	
14	23	U.S. Treasury securities				24	33	TOTAL LIABILITIES		$
15	24	Mortgage investments								
16	25	Other investments	2							
17	26	Fixed assets	5	73,167	[illegible]			NET ASSETS		
18	27	Other assets	3							
19	28	TOTAL ASSETS		$ 1??,??0	[illegible]	25	34	Net assets (Item 19 less item 24)		$ 1??,???

SCHEDULE 1—LOANS RECEIVABLE *(See Instructions, Item 13)*

Name of Officer, Employee, Member or Business Enterprise (A)	Purpose of Loan, Security, if any, and Arrangement for Repayment (B)	Am (C
1.		$
2.		
3.		
4. Total additional listings, if any		
5. Total loans not listed above		
6. Totals of lines 1 through 5		$

SCHEDULE 2—OTHER INVESTMENTS *(See Instructions, Item 16)*

Description (A)	Amount (B)	
Marketable securities:		
1. Total cost	$	
2. Total book value		
3. Itemize each marketable security holding over $1,000 where book value exceeds 20 percent of the total on line 2 above.		
(a)		
(b)		
Other Investments:		
4. Total cost		
5. Total book value		
6. Itemize each other investment holding over $1,000 where book value exceeds 20 percent of the total on line 5 above.		
(a)		
(b)		
7. Total of lines 2 and 5	$	

SCHEDULE 3—OTHER ASSETS *(See Instructions, Item 18)*

Description (A)	
1.	$
2.	
3.	
4.	
5. Total of lines 1 through 4	$

SCHEDULE 4—OTHER LIABILITIES *(See Instructions, Item 2*

Description (A)	
1.	$
2.	
3.	
4.	
5.	
6.	
7. Total of lines 1 through 6	$

SCHEDULE 5—FIXED ASSETS *(See Instructions, Item 17)*

Description (A)	Cost or Other Basis (B)		Total Depreciation (if any) (C)		
1. Land (Give location):	$ 12,023	[illegible]			$
2. Buildings (Give location):	39,191	[illegible]	$		[illegible]
3. Automotive equipment					
4. Office furniture and equipment	[illegible]	[illegible]			
5. Other fixed assets					
6. Totals of lines 1 through 5	$ 73,1??	[illegible]	$		$

SCHEDULE 6—LOANS PAYABLE *(See Instructions, Item 21)*

Source (A)	Arrangements for Repayment (B)	Am (C
1.		$
2.		
3. Total from additional listings, if any		
4. Totals of lines 1 through 3		$

United Steelworkers of America
AFL-CIO-CLC
FIVE GATEWAY CEN[illegible]RGH, PA. 15222

Lloyd McBride
International President

MAY 1 - 1982

May 7, 1982

Ieva S. Bradley, Chief
Section of Technical Assistance
  and Education
U. S. Department of Labor
200 Constitution avenue
Washington, D. C. 20216

Dear Sir:

We are enclosing for your records an amended initial report for the following Local Union:

L. U. No.	District No.	Trustee	BLMR File No.
7854	38	Lavern Melton	068741

Sincerely yours,

Lloyd McBride

President

TRUSTEESHIP REPORT FORM LM-15

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT—FILE TWO COPIES MAY 10 1982

Office of Labor-Management and
Welfare-Pension Reports
U.S. Department of Labor
Washington, D.C. 20210

1. Type of Report:
☒ Initial (Complete both sides)
☐ SEMIANNUAL FOR PERIOD ENDING: Month Day Year

2. LM File No. 068741-8

3. Date Trusteeship Established Jan. 18, 1982

4. Full name and address of reporting labor organization which has assumed trusteeship. Include ZIP Code

UNITED STEELWORKERS OF AMERICA
Five Gateway Center
Pittsburgh, Pa. 15222

5A. Full name and address of subordinate labor organization held in trustee ship. Include ZIP Code

Local Union 7854, District 38
Lavern Melton, Trustee

5B. City and State where organization under trusteeship is chartered to operat

P. O. Box 958
Kellogg, Idaho 83837

6. Any other address where records necessary to verify this report are kept. Include ZIP Code

7A. Check applicable reasons for establishing or continuing the trusteeship

☐ A. To correct corruption or financial malpractice
☒ B. To assure the performance of collective bargaining agreements or other duties of a bargaining representative
☐ C. To restore democratic procedures
☐ D. Other (Specify)

7B. List provision(s) of constitution which specifically authorizes imposition o trusteeship ART. IX

8. Give detailed statement which explains each reason checked above. If additional space is needed, attach sheets to this report. (See instructions)

All of the Local Union officers resigned and an Administrator was necessary to assure that the terms and conditions of the collective bargaining agreemen are properly implemented by the employer and to carry out the duties and responsibilities of the Local Union.

9. During the period covered by this report, (A) was there a convention or other policy determining body to which the subordinate labor organization sent delegates would have sent delegates if not in trusteeship, or (B) was there an election of the officers of the labor organization assuming the trusteeship?

(A) ☐ Yes ☒ No.
(B) ☐ Yes ☒ No.

If the answer to either (A) or (B) is "Yes," complete Part A or B as applicable, of the schedule on selection of delegates and officers, Form LM-15A, which is included this packet, and attach to this report.

VERIFICATION AND SIGNATURE

Each of the undersigned authorized officers of the labor organization assuming the trusteeship declares, under penalty of law, that all of the information in this report, including the attachments incorporated therein or referred to in any part of this report, has been examin by him and is, to the best of his knowledge and belief, true, corre and complete.

Signature of president of labor organization assuming trusteeship (If other title, cross out and write in correct title.) Lloyd McBride	Signature of treasurer of labor organization assuming trusteeship (If other tit cross out and write in correct title.) Frank S. McKee
Where and when signed (City and State) (Date) Pgh Pa - 5/7/82	Where and when signed (City and State) (Date) Pgh Pa - 5/7/82
Signature of trustee of subordinate labor organization (If other title, cross out and write in correct title.) Lavern A Melton ADMINISTRATOR	Signature of trustee of subordinate labor organization (If other title, cross o and write in correct title.)
Where and when signed (City and State) (Date) Kellogg, Idaho 4-27-82	Where and when signed (City and State) (Date)

263-659 O-8?-?

COMPLETE FOR INITIAL REPORT ONLY

STATEMENT OF ASSETS AND LIABILITIES

Assets—As of Date Trusteeship Imposed						Liabilities—As of Date Trusteeship Imposed				
Item No.	LM-2 Item		Sch.	Amount		Item No.	LM-2 Item		Sch.	Amount
10	19	Cash on hand		$		20	29	Accounts payable		$
11	20	Cash in banks		55,913	25	21	30	Loans payable	6	
12	21	Accounts receivable				22	31	Mortgages payable		
13	22	Loans receivable	1			23	32	Other liabilities	4	
14	23	U.S. Treasury securities				24	33	TOTAL LIABILITIES		$
15	24	Mortgage investments								
16	25	Other investments	2							
17	26	Fixed assets	5	73,167	00			NET ASSETS		
18	27	Other assets	3							
19	28	TOTAL ASSETS		$129,080	25	25	34	Net assets (Item 19 less Item 24)		$129,080 2

SCHEDULE 1—LOANS RECEIVABLE (See *Instructions, Item 13*)

Name of Officer, Employee, Member or Business Enterprise (A)	Purpose of Loan, Security, if any, and Arrangement for Repayment (B)	Amount (C)
1.		$
2.		
3.		
4. Total additional listings, if any		
5. Total loans not listed above		
6. Totals of lines 1 through 5		$

SCHEDULE 2—OTHER INVESTMENTS (See *Instructions, Item 16*)

Description (A)	Amount (B)
Marketable securities:	
1. Total cost	$
2. Total book value	
3. Itemize each marketable security holding over $1,000 where book value exceeds 20 percent of the total on line 2 above.	
(a)	
(b)	
Other investments:	
4. Total cost	
5. Total book value	
6. Itemize each other investment holding over $1,000 where book value exceeds 20 percent of the total on line 3 above.	
(a)	
(b)	
7. Total of lines 2 and 5	$

SCHEDULE 3—OTHER ASSETS (See *Instructions, Item 18*)

Description (A)	Book Value (B)
1.	$
2.	
3.	
4.	
5. Total of lines 1 through 4	$

SCHEDULE 4—OTHER LIABILITIES (See *Instructions, Item 23*)

Description (A)	Amount (B)
1.	$
2.	
3.	
4.	
5.	
6.	
7. Total of lines 1 through 6	$

SCHEDULE 5—FIXED ASSETS (See *Instructions, Item 17*)

Description (A)	Cost or Other Basis (B)	Total Depreciation (If any) (C)	Book Value (D)
1. Land (Give location):	$12,623.00		$12,623
2. Buildings (Give location):	39,181.00		39,131.
3. Automotive equipment			
4. Office furniture and equipment	21,263.00		21,263.
5. Other fixed assets			
6. Totals of lines 1 through 5	$73,167.00	$	73,167

SCHEDULE 6—LOANS PAYABLE (See *Instructions, Item 21*)

Source (A)	Arrangements for Repayment (B)	Amount (C)
1.		$

Senator Nickles. The net result is one part of the mine is still operating, at Crescent Mine?

Senator Symms. The Crescent Mine has restarted.

Senator Nickles. Is that just one-fourth, or——

Senator Symms. That is about 70 employees. There were 2,100 employees before. There are about 70 people who have gone back to work, that is all.

Senator Nickles. Because the national officers of United Steelworkers of America refused to go along with the majority vote——

Senator Symms. My belief was—and my conversations with Mr. McBride at the time confirmed this—that they had other contracts that were about to come up, and they did not want the precedent of a reduced contract in Idaho to be used in bargaining against them somewhere else.

So what I would encourage you to do is somehow to protect the rights of the workers in an individual, localized area where they had a unique situation, and the workers themselves recognized that they had to improve the productivity and the cost of production at the operation in order to keep it in operation. It was totally unfair to them that the Steelworkers Union headquartered in Pittsburgh overruled the local decision on the part of the members of that union.

What I would like to urge you to do as chairman of this subcommittee is to find some way to protect the democratic process for workers like that group in Idaho, so this will not happen again somewhere else in the United States. It is a little late now for Idaho, but the tragic story of that community and the tragedy of those families should not be allowed to reoccur anywhere else in this country.

Senator Nickles. This committee has received a lot of testimony from individuals saying they did not have a right to vote. Your statement is the first one, and I compliment you on how well-organized and detailed it was, that said yes, they had a vote, and then the international leaders just really repudiated the majority vote by their membership.

Do you think that the use of the trustee provision of the law was an abuse on the part of the leadership of the union?

Senator Symms. Yes, I do. They took away people's right to the democratic process in this case, because control over the situation went back to the national union, to the big union bosses' headquarters, as opposed to letting the local union's decision to go back to work at a reduced contract stand.

Senator Nickles. Since Idaho does not have a right to work law, was this a plant that had a closed shop or a mandatory——

Senator Symms. Yes, it was a closed shop.

Senator Nickles. It was a closed shop, so everybody had to be a member of the union before they could work at the plant?

Senator Symms. I believe that is correct, yes.

Senator Nickles. Do you think there would be widespread support in Idaho for a labor law change which would require an international to abide by the democratic decision of a union local?

Senator Symms. I think there would be widespread support for it in the State.

Senator **Nickles**. Was there an attempt, after the national leaders repudiated the vote, to decertify the union at the plant, that you are aware of?

Senator **Symms**. Yes, there was.

Senator **Nickles**. Was it successful, unsuccessful, did it run out of time?

Senator **Symms**. Unsuccessful.

Senator **Nickles**. Senator Symms, we appreciate your statement before the committee and your efforts in trying to preserve the democracy for working men and women of this country.

Senator **Symms**. Thank you very much, Mr. Chairman. I would also like to thank a member of my staff, Rusty Jesser, who helped to organize this presentation for me this morning.

Senator **Nickles**. Thank you very much.

Next is a panel accompanied by Reed Larson, president of the National Right to Work Committee; Steve Havas, from Glenfield, NY; and John Hurley, from Deale, MD.

STATEMENT OF REED E. LARSON, PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE, SPRINGFIELD, VA; STEVE HAVAS, GLENFIELD, NY, AND JOHN HURLEY, DEALE, MD

Mr. **Larson**. Mr. Chairman and members of the committee, I first will introduce myself. I am Reed Larson, president of the National Right to Work Committee. Ours is a 1.7 million-member citizens' organization, dedicated to the elimination of compulsory unionism.

It is a real pleasure to be here today, and I certainly want to commend the chairman and the members of this committee for taking this historic step of examining for the first time the basic fairness and effectiveness of our Nation's labor policy.

I believe I should introduce the two gentlemen with me at this point. I consider it a real privilege to be joined at this table by Mr. Havas of New York and Mr. Hurley of Maryland, who are two individual employees who are actually waging a battle for freedom on behalf of all of us. Their courage and leadership are an inspiration to everybody that knows them and certainly provides testimony to the need for more attention for the rights of employees as they are affected today by the national labor laws.

Mr. Chairman, I have prepared a statement which has been submitted for the record. In the interest of brevity, as was conveyed to me, in order to expedite the hearing, I will just summarize and hit a few of the general points in the statement, to speed things along. Then all of us on the panel will be anxious to take your questions.

Senator **Nickles**. Fine.

Mr. **Larson**. In our opinion, the national labor policy as embodied in the National Labor Relations Act has failed miserably in achieving its piously proclaimed goal of protecting worker rights. As a matter of fact, the National Labor Relations Act itself is an enemy, not a protector, of employee rights. In a large measure, this failure of the national labor policy stems from the fact that it is based on a highly questionable premise. It rests on the idea that the public interest is best served by collectivizing workers.

Furthermore, Congress has concluded that it is the role of the Federal Government to confer on union organizers whatever coercive power, special privileges, and legal immunities are necessary to ensure that they succeed in accomplishing this goal, the collectivization of employees into unions.

There is a second premise which underlies the labor policy, too, which is clearly fallacious, and which was illustrated so dramatically by the tragic story we just heard of the Bunker Hill incident that was presented by Senator Symms. This second premise, which we find throughout labor policy, is that the interests of the employee are always the same as the interests of the union. This is the basis on which the labor law was written, and is the way it operates: that whatever is good for the union is good for the employee. And, as we have seen over and over and over again, many times, the institutional interests of the union, just as in the case of Bunker Hill, are diametrically opposed to the interests of the employee.

The coercive nature of our Federal labor policy has led Nobel laureate, F.A. Hayek, to describe it as, quote:

> A state where labor unions have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fail in their prime function—the prevention of coercion and violence.

Another authority who has written very, very insightfully on the nature of the labor law is Prof. Robert Bork, writing as a professor at Yale University a few years ago. He had this to say about the nature of our labor policy—and I am quoting from Professor Bork:

> Those who use or advocate coercion and disruption for political or ideological ends have a ready model in the legally-sanctioned struggle between labor unions and management. Our labor law, and the ideology that supports and suffuses it, encourages the organization of employees into fighting groups and lets the wage bargain depend on the outcome of the fight. The rhetoric of union organization and struggle is the rhetoric of war. The method of struggle by both sides is coercive, each attempting to put intolerable pressure on the other in order to achieve a favorable, if temporary, treaty of peace.

Though it is not generally recognized, the NLRA is designed specifically to pressure employers into becoming the instruments of union pressure against employees. The National Labor Relations Act is heavily loaded with provisions which often make it profitable for employers to compromise employees' freedom of choice while, at the same time, making it extremely costly for them to defend employee freedom.

Consider, for example, the fact that the NLRA makes it a crime—not just an unfair labor practice—it is a criminal act for an employer to pay a bribe to a union official if he pays him out of his own pocket to gain what are euphemistically called "labor peace."

Incredibly, however, the very same law not only sanctions, but actually encourages, the payment of such bribes so long as the money is extracted from the pockets of employees against their will.

We in the National Right to Work Committee advocate a program of revision in the National Labor Relations Act which will remove the damaging elements of its antiemployee bias. We felt that the job could best be accomplished by amendments to the act rather than by complete repeal of the act itself.

However, in recent weeks, two important new voices, those of Richard Trumka, president of the United Mine Workers Union, speaking before this very committee, incidentally, and Lane Kirkland, president of the AFL-CIO, have been raised on behalf of complete repeal of the act. If those two gentlemen are serious—and I doubt that they are—we would not oppose such a move. Even though it is likely that Mr. Trumka and Mr. Kirkland are simply posturing for political effect, we should not dismiss the possibility that they mean what they say. I expect, however, that they are trying to draw attention to their dislike for the fact that for the first time in history, the National Labor Relations Board is administering labor policy in a fair and evenhanded manner.

Union officials have long been accustomed to administration of the labor law in a way which clothes union organizers with even more coercive power than was intended by the drafters of the act.

Nevertheless, I would like to call on Mr. Trumka and Mr. Kirkland to put up or shut up. We would be willing to join with them in an appeal to Congress to wipe the slate clean by a complete repeal of the National Labor Relations Act. This would pave the way for a reexamination of the role of Government in assisting union organizers and an examination of the premises on which our labor policy is based.

If it turns out that Mr. Trumka and Mr. Kirkland are totally insincere in their call for repeal of the NLRA, I would then ask this committee to turn its attention to specific inequities in the law which need urgent and immediate attention.

We have provided in our statement numerous examples of the antiemployee bias and have appended to the statement a list of approximately 10 specific issues in which the rights of employees are compromised by the statute. I think, rather than taking the time of the committee for me to enumerate those, I'll just wind up the statement at this point and hopefully, Mr. Chairman, you can raise any questions that you want to explore any further, and we will have our statement for the record, if that is satisfactory to you.

[The prepared statement of Mr. Larson follows:]

Statement of

REED LARSON

President, National Right to Work Committee

Taft/Hartley Oversight Hearings

before the

Subcommittee on Labor

of the

Committee on Labor & Human Resources

September 18, 1984

My name is Reed Larson. I am President of the National Right to Work Committee, a 1.7 million member citizens' organization dedicated to the elimination of compulsory unionism. I want to commend the chairman and the members of this committee for taking this historic step, examing for the first time the basic fairness and effectiveness of our national labor policy.

In our opinion, the national labor policy as embodied in the National Labor Relations Act has failed miserably in achieving its piously-proclaimed goal of protecting worker rights. As a matter of fact, the National Labor Relations Act itself is an enemy, not a protector, of employee rights.

In a large measure, this failure of national labor policy stems from ~~a~~ the fact that it is based on a highly questionable premise. It rests on the idea that the public interest is best served by collectivizing workers. Furthermore, Congress has concluded that it is the role of the federal government to confer on union organizers whatever coercive power, special privileges, and legal immunities are necessary to ensure that they succeed in accomplishing this goal of the national labor policy -- the collectivization of employees into unions.

We continue to advocate a program of revisions in the National Labor Relations Act which will remove the most damaging elements of its anti-employee rights bias. We have felt that the job could best be accomplished by amendments to the Act, rather than by complete repeal of the Act itself.

However, in recent weeks, two important new voices -- those of Richard Trumka, President of the United Mine Workers Union, and Lane Kirkland, President of the AFL-CIO -- have been raised on behalf of complete repeal of the Act. If those two gentlemen are serious -- and I doubt that they are -- we would not oppose such a move.

Even though it is likely that Mr. Trumka and Mr. Kirkland are simply posturing for political effect, we should not dismiss the possibility that they are serious. I expect, however, that they are trying to draw attention to their dislike for the fact, that for the first time in history, the National Labor Relations Board is administering labor policy in a fair and even-handed manner. Union officials like Mr. Trumka and Mr. Kirkland have long been accustomed to administration of the labor law in a way which clothes union organizers with even more coercive power than was intended by the drafters of the Act.

Nevertheless, I would like to call on Mr. Trumka and Mr. Kirkland to put up or shut up. We would be willing to join with them in an appeal to Congress to wipe the slate clean by a complete repeal of the National Labor Relations Act. This would pave the way for reexamination of the role of government in assisting union organizers, and an examination of the premises on which our labor policy is based.

If it turns out that Mr. Trumka and Mr. Kirkland are totally insincere in their call for repeal of the National Labor Relations Act, I would ask this Committee to turn its attention to specific inequities in the law which need urgent and immediate attention.

In his remarks before this Committee, Mr. Trumka described the NLRA as a "cruel hoax." Insofar as employee rights are concerned, much of the Act is indeed just that, but not in the sense which Mr. Trumka implied.

One of the most cynical pieces of federal law appears in Section VII of the National Labor Relations Act. Ironically, that Section is entitled, "Rights of Employees."

The section begins with a pious assertion that "employees shall have the right to self organization to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities..." Any reasonable person who stopped reading Section 7 at this point would conclude that the drafters of the 1935

Wagner Act had crafted a veritable Magna Carta of rights and freedoms for America's working people. Unfortunately, it is in the language immediately following this pious pronouncement that the cruel hoax is revealed.

According to the NLRA, workers shall enjoy these rights, including the right to refrain "...except to the extent that such rights may be affected by an agreement requiring union membership as a condition of employment..." In other words, employees have full freedom of choice except that they don't have any freedom at all where compulsory unionism is concerned. They will be fired from their jobs if they refuse to support an unwanted union.

America's national labor law rests on a faulty foundation. The NLRA, as stated in its preamble, is based on the premise that the public interest is best served by collectivising people -- by organizing them into unions. To achieve this result, the framers of our federal labor law placed the power of government on the side of the union organizer and against the independent citizen.

Too often, under the NLRA, employees are made mere spectators in the crucial decision of whether or not they will belong to unions which hold dictatorial powers over working conditions and wages. As the workers here with me today will testify, this misguided policy has led to a myriad of abuses of employee rights.

The inherent bias against employee rights in the NLRA is manifested in many ways, but two of the special privileges enjoyed by union officials are fundamental to our current system of compulsory unionism.

First, the special monopoly bargaining privileges granted union officials in Section 9 strip dissenting employees of their freedom to bargain with their own employer. It matters not that an employee has enjoyed a favorable employment contract with his employer for years before the union ever came along. That goes out the window under exclusive representation.

Secondly, the authorization of compulsory union shops in Sections 7 and 8 add insult to injury by giving the backing of the NLRA to the practice of compelling employees to pay for unwanted union representation.

Even worse, much of the billions of dollars of compulsory fees collected from unwilling workers is not spent by union officials to support collective bargaining. As numerous court cases have revealed, union officials operating on billions of dollars conscripted from workers' paychecks, have built a giant political machine geared entirely towards electing political candidates opposed by many of the rank and file. The politicians who benefit from this machine consistently line up with union officials to further assault the rights of individual workers to choose whether or not to join unions. The presidential candidate currently backed by the AFL-CIO, for instance, has committed himself to the repeal of Section 14(b), which grants the individual states the power to outlaw some of the compulsory unionism powers granted union officials under the NLRA.

This coercive nature of our federal labor policy led Nobel Laureate F. A. Hayek to describe it as "...a state where labor unions have become uniquely privileged institutions to which the general rules of law do not apply. They have become the only important instance in which governments signally fail in their prime function -- the prevention of coercion and violence."

This philosophy of the National Labor Relations Act, which by its nature, institutionalizes coercion and conflict in labor relations, was best summarized a few years ago by Professor Robert H. Bork, then of Yale University.

Professor Bork wrote:

> "Those who use or advocate coercion and disruption for political or ideological ends have a ready model in the legally sanctioned struggle between labor unions and management. Our labor law, and the ideology that supports and suffuses it, encourages the organization of employees into fighting groups, and lets the wage bargain depend on the outcome of the fight. The rhetoric of union organization and struggle is the rhetoric of war. The method of struggle, by both sides is coercive, each attempting to put intolerable pressure on the other in order to achieve a favorable if temporary treaty of peace."

Though it is a fact not generally recognized, the NLRA is designed specifically to pressure employers into becoming the instruments of union pressure against employees. The NLRA is heavily loaded with provisions which often make it profitable for employers to compromise employees' freedom of choice while, at the same time, making it extremely costly for them to defend employee freedom.

Consider, for example, the fact that the NLRA makes it a crime for employers to pay bribes to union officials out of their own pockets to gain what is euphemistically called labor peace.

Incredibly, however, the very same law not only sanctions, but actually encourages the payment of such bribes so long as the money is extracted from the pockets of his employees against their will. For instance, an employer may find it more profitable to sign a compulsory unionism contract in exchange for lower wage demands by the union agent. The individual employee not only receives lower wages as a result of the union agent's "deal", but also is forced to turn over part of his paycheck to the union treasury to pay for the employer's legalized bribe to the union official. Ironically, while such a deal is clearly immoral, it is perfectly legal. In fact, it is mandated by the drafters of the NLRA. Thus, the NLRA compels an employer to put a price tag on his employees' freedom and to offer it as a bargaining chip in negotiations with union officials.

Unfortunately, the individual workers like Mr. Hurly and Mr. Havis get cheated in a deal over which they have no say.

How, then, can we address these fundamental errors in our federal labor policy?

First, we must challenge the wisdom of the concept that it is in the public interest to forcibly unionize workers. Until these hearings of last week and today, Congress has refused to even discuss the premises upon which labor law rests. Some critics of union power, such as employer associations, have complained about minor details of labor law, and have campaigned to adjust it a little here, and a bit there, but the fundamental assumption that compulsory unionization is beneficial goes virtually unchallenged.

Again, I want to compliment this Committee on the history-making step it has taken by beginning, at long last, a serious examination of the fundamentals of national labor policy. Although time is too short in the remaining days of this Congress to expect realistically any final action on matters of this scope and importance, I do call on each member of this Committee to make this subject a high priority when the Senate reconvenes next January. The testimony collected here today can help to provide a foundation on which a major examination of labor policy can go forward in the public interest as soon as a new session of Congress begins.

We are submitting with this testimony a list of specific provisions in the National Labor Relations Act which must be changed if it is to serve its stated purpose as a protection of employee rights.

Two bills now pending before this Subcommittee, S. 1200 and S. 2533, deal with anti-employee rights aspects of the law, which we believe deserve the highest priority. Numerous other changes, which we are detailing in our supplementary statement to the Committee, will point the way towards additional progress in restoring rights of employees.

Mr. Chairman, and members of the Committee, let me conclude by restating our willingness to join with top union officials in wiping the slate clean through repeal of the National Labor Relations Act. With that beginning, we can then move forward to erect a totally new federal labor policy dedicated solely to the public interest, and the protection of the rights and freedom of all Americans.

PROVISIONS OF NLRA RECOMMENDED FOR CHANGE

Some of the specific coercive features of federal labor policy as it presently exists may be listed as follows:

a. The monopoly bargaining privilege which enables a union to represent one hundred percent of a group of employees, although the union may have gained recognition with the support of only fifty percent plus one. This privilege deprives all other individuals of their right to make arrangements of their own choosing with their employer. This interpretation of the law has been specifically approved by the Supreme Court of the United States.

b. Employees can be forced to pay a part of their earnings to a union, or else give up their jobs. These monies are initiation fees, plus amounts equaling union dues, and also assessments (under the Railway Labor Act). Individual states, by means of right to work laws can protect employees against these compulsory payments -- except as to employees covered by the Railway Labor Act.

c. In any state, if an employee authorizes the deductions of monies from his pay for the union, this may be legally irrevocable for a period as long as one year. The courts have thus far held that right to work laws can provide no relief from this specific form of compulsion.

d. In certain industries no employee may be hired unless he is cleared through a union "hiring hall." This system typically leads to the preference of union members and those in favor with union officials for jobs, leading to a de facto closed shop.

e. Organizational and recognitional picketing by unions is sanctioned with only minimal restrictions.

f. Secondary pressure brought by labor unions against neutral parties is prevalent and only cosmetically restrained.

g. Employers are required by law to bargain in good faith with unions who are given the monopoly bargaining privilege set forth in (a) above. The duty extends beyond merely meeting, conferring, and listening to representatives of employees. The duty is to enter into negotiations with the intent to reach a written agreement with the monopoly representatives of the employees.

h. Arbitration of labor disputes arising under collective bargaining agreements is in the hands of arbitrators who are beholden to management and union officials for their appointments. This leads to injustice to individuals or groups of employees whose interests may be adverse to both management and the union officials.

i. Matters arising in a representation proceeding before the NLRB, i.e., questions concerning the scope and composition of a unit of employees for representation, misconduct preceding and during the election, and similar matters are not subject to direct court review. NLRB decisions on these matters are final. Only indirectly, by the employers' refusal to bargain, may errors of the NLRB be examined.

j. The General Counsel of the National Labor Relations Board exercises practically unreviewable discretion over unfair labor practice charges. The courts will rarely accept a case charging an abuse of discretion on the part of the Board's General Counsel.

k. Except to the extent mentioned above, in the case of state right to work laws, the federal rules and rulings here enumerated largely preempt state law protections and common law protections which would otherwise be applicable.

The foregoing is not intended as a comprehensive and detailed listing of all of the particular features of national labor policy which facilitate the coercions referred to. The items listed are merely illustrative of specific sources of the over-all problem. All of them contribute in some way to the coercions which by law may now be imposed upon individual employees.

Senator Nickles. Did the two other panelists wish to make any other opening remarks?

Mr. Larson. Yes, Mr. Steve Havas will speak next.

Mr. Havas. Thank you, Mr. Larson.

Mr. Chairman, subcommittee members, ladies and gentlemen, since my 4 years of voluntary active military service, which included 1 tour in Korea during that conflict, I have been employed by the New York Telephone Co.

I feel that what I have to say today is in the hearts of countless Americans and appreciate this opportunity to express my feelings and concerns.

I resigned my membership in the Communication Workers of America, CWA, because the American ideals I believe in—the inherent right to work, integrity of work, to do as one pleases with the product of honest labor in the absence of compulsion, and good citizenship and individual liberty—were 180 degrees out of phase with their philosophy.

In 1971, in a display of poor citizenship, two violent and illegal strikes, one of 7 months' duration, were conducted by CWA against my employer. The first strike, January 11 through January 25, 1971, carried with it the distinction of defying a Federal court order, that of Judge John M. Kinella of New York. The end result of the 7-month strike was a union shop agreement between those parties. By this agreement, I am compelled to pay an agency fee. This fee is equal to a member's dues. If I fail to comply, my employment will be terminated by my employer. Unions claim the agency fee is a representation fee. This assertion rings hollow. There can be no representation if one is denied the freedom of speech, association, and expression by those claiming to be representatives. This, Senator, is my situation.

We are all aware of the bodily injury, property destruction and mental anguish type of violence many victims of compulsory unionism have had to endure. In our society, these actions are inexcusable and have made necessary the passage of the Hobbs Act Amendment.

I have been threatened with bodily harm and have tolerated verbal abuse by picketers, have had damage done to my personal car and have been subjected to varying degrees of harassment because of my principles.

But lest we forget, injury to one's principles is, likewise, violence—certainly not as devastating as the previous-mentioned forms, but nonetheless, violence. For over 12 years, I have been compelled financially to support political candidates not of my choice and causes not in my best interest. This is a Presidential election year. My heart is with one candidate, yet I am compelled financially to support the other under fear of loss of employment. This is a flagrant violation of my political freedom.

In 1972, we traveled down a number of avenues, seeking relief. We were rebuffed by Government. I made an attempt to obtain assistance from the office of the Governor of New York State. I was successful in reaching and speaking with Governor Rockefeller's appointment secretary. She politely informed me that the Governor was not sympathetic to the right to work.

The State of New York Department of Labor concurred in their letter to me, dated February 15, 1972. With this rebuff, we turned our efforts for help to the private sector. We found only one public-spirited organization that had both the dedication and courage to act upon our plea—the National Right to Work Committee. On May 30, 1975, over 9 years ago, the National Right to Work Legal Defense Foundation filed suit on behalf of my wife and me and 16 other New York Telephone Co. employees in an effort to correct the injustices caused by the compulsory unionism agreement. Our suit is pending in the U.S. District Court for the Northern District of New York, sitting in Syracuse.

Our Nation was born from a dream, a bloody revolution, and finally, a Constitution, with its Bill of Rights, the oldest written constitution on Earth. The words and spirit reflect the ideals of our Nation's founders. It was designed to safeguard for all generations those freedoms and liberties cherished by them. I was taught the Constitution is the supreme law of our land; any law or part thereof which, to any degree, suppresses those freedoms guaranteed us is unconstitutional. The founders relied heavily on the wisdom of future legislators to legislate laws which remained within the confines of the word and spirit of the Constitution. Based on this, one must question the wisdom applied in the development of the labor laws governing us today—laws which allow compulsory unionism and infringement upon our constitutional rights. Compulsory unionism makes a shambles of the ideals of Samuel Gompers and gives birth to despotic organizations. Like a cancer, it eats away at the very fibers of the backbone of freedom and desecrates the word and spirit of our Constitution. It is un-American.

The chains of bondage, compulsory unionism, have been forged and are shackling the American worker at an alarming rate. The loss of freedom, regardless how minute some may think, cannot be tolerated. Not to speak out would be treasonous to the principles upon which our Nation was founded.

We affectionately call her "Old Glory". She is the symbol of freedom and liberty. She reflects the hardships, sacrifices, blood, sweat, and tears of countless Americans, both the known and unknown. They gave unselfishly of wealth and their most cherished property, life, to safeguard what she symbolizes. They knew God grants liberty only to those who understand, love, and are willing to defend it.

Our forefathers had to resort to arms. We need only to the flag, your wisdom, conscience, and courage. We appeal to you to help modify our labor laws so they, too, will answer to that most magnificent document, the American Constitution.

Thank you, Mr. Chairman.

Senator NICKLES. Thank you, Mr. Havas.

[The prepared statement of Mr. Havas follows:]

Statement of

STEVE HAVAS

Taft/Hartley Oversight Hearings

before the

Subcommittee on Labor

of the

Committee on Labor & Human Resources

September 18, 1984

SUMMARY STATEMENT FOR STEVE HAVAS

Mr. Chairman:

Speaking from bitter personal experience, I can say that federal labor law has failed miserably in the protection of individual workers like myself. I am sure that the majority of Americans oppose the compulsory unionism provisions in the NLRA, and I thank you for the opportunity to tell my story to the public at this hearing today.

After serving four years of voluntary active military service, including a tour in Korea, I became an employee of the New York Telephone Company, one of the numerous companies in the Bell System.

I worked for years at New York Telephone as a member of the Communications Workers of America-union until, in 1971, two violent strikes -- one of seven months' duration -- were conducted by the CWA against my employer. These strikes were part of a general strike against the Bell System called by then-CWA president, Joseph Beirne. Eventually, the negotiations were settled, with Bell System employees securing a huge 33% wage increase for the three-year term of the contract. CWA-members eagerly returned to work.

Unfortunately for New York CWA-members, the New York CWA-union officials decided to hold out for agency shop in our contract, thus keeping us out of work. Because I decided this strike offered me no economic benefits I resigned my membership from the CWA-union and went back to work.

Unfortunately, the end result of the seven-month strike was a union shop agreement between both parties. By this agreement, I am compelled to pay an agency fee despite the fact that I have resigned from the union. This fee is equal to a member's dues. If I fail to comply, my employment will be terminated by my employer. Unions claim the agency fee is a representation fee. This assertion rings hollow. There can be no representation if one is denied the freedom of speech, association and expression by those claiming to be representative.

The New York CWA-union officials did bargain for a miniscule amount of money over the nationwide settlement, but statements by the CWA officials indicate that their major purpose in conducting this destructive strike was not to benefit workers, but to collect forced dues from them instead.

That sticking agency shop issue, by which non-members of the union are compelled to pay fees to the union officials, had no economic benefit to New York Telephone Company employees. In fact, Morton Bahr, a Vice President of the Union, has said that the increase in the wage-fringe package between the rejected August 1971 "nationwide settlement" with the Bell Systems (except for New York) and the offer accepted by the New York CWA-union officials in February of 1972 was an insult, and that the principal difference was the agency shop.

As far as I am concerned, the union has failed in its duty as the exclusive bargaining representative to represent my needs fairly. Beyond this dismal failure to use their federally-granted powers of compulsory unionism to represent me fairly, there's another, deeper issue. I resigned my membership in the Communication Workers of America because the philosophy, political and social views of the CWA-union officials are opposed 180 degrees to the American ideals in which I believe -- the inherent Right to Work, integrity of work, to do as one pleases with the product of honest labor, to practice good citizenship and individual liberty.

For twelve years, I have been compelled financially to support political candidates not of my choice and causes not in my best interest. This is a Presidential election year; my heart is with one candidate, yet I am compelled financially to support the other under fear of loss of employment. This is a flagrant violation of my political freedom as guaranteed by the Constitution.

Since we began in 1972, we have traveled down a number of avenues seeking relief. We were rebuffed by the government agencies supposedly created by the NLRA to protect our rights. In 1975 my wife and I and sixteen other New York Telephone Company employees filed suit in an effort to correct the injustices caused by the compulsory unionism agreement. Our suit is pending in the U.S. District Court for the northern district of New York.

I was taught the Constitution is the supreme law of our land. Any law or part thereof which to any degree suppresses those freedoms guaranteed us is unconstitutional. The founders relied heavily on the wisdom of future legislators to enact laws which would remain within the confines of the word and spirit of the Constitution. Based on this, one must question the wisdom applied in the development of the labor laws governing us today: laws which allow compulsory unionism and infringement upon our Constitutional rights.

The loss of freedom, regardless of how minute some may think, cannot be tolerated. Not to speak out would be treasonous to the principles upon which our nation was founded.

We appeal to you to help modify our labor laws so they too will answer to that most magnificent document, the American Constitution.

Thank you.

Senator NICKLES. Mr. Hurley.

Mr. HURLEY. First, Senator, I would like to thank you and your committee for inviting me here. And I am a telephone man, not a public speaker, so you will have to be patient with me.

Senator NICKLES. Fine. If you raise the microphone up a little bit, that will help.

Mr. HURLEY. All right.

Now, you have my written statement, and my oral statement will be somewhat different, but the written statement contains most of what I feel.

Senator NICKLES. We will put all of the panelists' written statements in full in the record.

Mr. HURLEY. Thank you.

By way of introduction, my name is John Hurley. I was born and raised here in the city of Washington, DC. I am now a resident of Deale, MD. I am married. I have two children and two grandchildren. My youngest son recently joined the U.S. Army and proudly serves in Augusta, GA. His parents are very proud of him, too.

I have been an employee of the phone company for 28 years. When the choice was mine, I voluntarily joined, paid dues to, and supported the union. I became active in the union, and in Washington, I held the position of steward, and then in Maryland, I held the positions of steward and acting chief steward.

In the late 1960's, the union and company inserted a clause into the contract—without our knowledge; I did not know about it, and I was an acting chief steward, and I did not know about it until I actually got a written copy, a printed copy, of the contract, long after it was ratified. But there was a maintenance of dues clause, so that any member of the union had to continue paying dues for the duration of the contract.

Now, when this happened, I resigned as steward, and shortly afterward, I resigned from the union, because something had been taken away from me that I felt was very precious. It was like losing a relative. But it was even more precious than that. It was my right to choose who I wanted to support. My right, as guaranteed by the Constitution—because that is what we are talking about here, is freedom for people to make choices in this country. You can choose which church you want to go to, where you want to live, what work you want to do, whom you want to vote for, which party you want to be a member of—if any. And what choices we make, we pay the consequences if we are wrong, and we have the enjoyment of being right when we are right. But the choices belong to the citizens, not to any private group.

I am required as a condition of my employment to pay to a union that has threatened the life and safety of my family and myself, has on numerous occasions lied to the telephone company, trying to get them to fire me. And yet I am forced, as a condition of my employment, to pay them 2 hours of my wages every month—2 hours of my labor, 2 hours of my sweat—involuntarily. I believe the Constitution answers this question directly. It is called involuntary servitude, and it is prohibited by the Constitution.

What we want is for the wrong that is in that law, the flaw, to be rectified. Back in the early part of this century, we amended the Constitution with the Prohibition amendment. It was a bad amendment. It did not work, and it violated people's rights under other sections of the Constitution. This government said, "Hey, we made a mistake. But we are going to rectify it." And they repealed the Prohibition amendment.

Now, in this Taft-Hartley law, we have a big flaw—a flaw that takes rights away from citizens of this Nation. The Constitution is our way of telling the whole world, here on this planet, there is a spot where people are free, where liberty is the most important thing we think about, and we guarantee it. I want to see that flaw rectified. I want to see the Constitution made whole again. I want my boy down in Augusta, GA, to know that the country he is serving is the best in the world and the best in history. And I want him and his children, and my older son's children—he has two—I want them to enjoy the blessings of liberty.

The only way to do this is through our elected representatives. You, Senator, and the members of the committee, are my legitimate representatives. You are sworn to protect and defend the Constitution, the same as my boy is. Down in my heart, I have made that same oath—to defend and protect this Constitution with everything I have, because this is what America is about. No private organization should have any control over my choices.

I call on this Senate to rectify that flaw and make that empty spot in my heart whole again.

Thank you, Senator.

Senator Nickles. Thank you very much, Mr. Hurley.

[The prepared statement of Mr. Hurley follows:]

Statement of

JOHN HURLY

Taft/Hartley Oversight Hearings

before the

Subcommittee on Labor

of the

Committee on Labor & Human Resources

September 18, 1984

Mr. Chairman:

I thank you and the members of this Committee for allowing me to tell the American people how my rights as an individual worker have been abused by our federal labor law. I think many Americans would be shocked to learn that many of their cherished Constitutional freedoms are trampled daily under the National Labor Relations Act.

As a former active and voluntary member of the Communications Workers of America-union, I feel that I can speak with some authority on the major issues before us in today's hearings -- freedom of association, choice of bargaining representatives, the payment of forced union dues, the lack of accountability as to how those dues are spent, and the right to earn a living free from fear and coercion.

As currently constituted, the National Labor Relations Act has failed miserably to protect my rights in all these catagories.

My troubles began in 1967, when international union officials rammed through a contract requiring non-members of the union to pay dues to the CWA. This contract provision was negotiated without the knowledge or consent of the rank-and-file. In fact, even though I served as a shop steward at the time, I had no inkling that such an agreement had been reached until I received a printed copy of the finalized contract.

Because I believe that the freedom to choose where you live, where you work, where you worship or with whom you associate is essential to living in America, I resigned from the union in protest over this compulsory unionism contract.

I also assisted other union members in obtaining the proper forms with which to resign from the union. Many of my fellow workers also chose to leave the CWA-union.

Unfortunately, even though I no longer felt that the CWA-union was representing me fairly and adequately, Section 9 of the NLRA prevented me from bargaining directly with my employer. Even worse, the agency shop contract imposed upon the rank-and-file required me to pay for this unfair bargaining representation.

In 1974, I joined 15 other employees in a lawsuit to recover that portion of our agency fees which we believed was being spent on non-bargaining items. While it is bad enough to be forced to pay for a bargaining representative you do not want, it is doubly unjust that the union officials collecting these forced dues have absolutely no accountability to the rank-and-file as to how that money is spent. A special federal court Master recently discovered in our lawsuit that CWA-union officials had spent nearly 80% of our forced fees on things which had nothing to do with collective bargaining, such as political causes and candidates opposed by many of the agency fee payers.

For my stand against the CWA-hierarchy, my life and the safety of my family have been threatened. Also, the CWA has made several efforts to pressure my employer into firing me. In order to keep my job, I am forced to pay money to a union which has threatened me and my family and attempted to have me fired.

Mr. Chairman, my rights as a United States citizen are being denied me by the compulsory unionism provisions of the NLRA. I am hopeful that my government will eventually do the right thing by fixing the law to more adequately protect the rights of individual workers like myself.

Senator **Nickles**. I have chaired many hearings, and I will compliment our entire panel for the comments you have made. You may not be professional speakers, but you have made your point very forcefully, as forceful as any I have heard.

Mr. Hurley, you mentioned that you are required against your will to, donate 2 hours of compensation per month to Communication Workers of America.

Mr. **Hurley**. Communication Workers of America.

Senator **Nickles**. Approximately how much would that equal?

Mr. **Hurley**. They take it out weekly; $6.90 a week, 52 weeks a year.

Senator **Nickles**. Mr. Havas, is that the same amount that you are contributing?

Mr. **Havas**. No, sir. It is $7.53 a week.

Senator **Nickles**. Is it the same formula, 2 hours per week?

Mr. **Havas**. Well, they work it on a 1.25 percent of your base pay. That does not include overtime, but is just your base pay.

Senator **Nickles**. Mr. Havas, you mentioned in your statement that you did not like contributing to an organization that you did not agree with.

Mr. **Havas**. That is correct.

Senator **Nickles**. You also mentioned that the organization did not represent you. How much do you contribute on an annual basis? Is it about $400 a year?

Mr. **Havas**. Yes.

Senator **Nickles**. You are putting in $400 a year, but the organization which you are forced to contribute to is, many times, not speaking on your behalf?

Mr. **Havas**. Well, Senator, I feel I am denied any input to contract negotiations. I have known stewards to come around in the past to members, asking them, "What would you like us to negotiate for this year?"—this type of input. And of course, they do not approach me to ask me for this type of input.

Second, they have local union meetings to discuss the contract, et cetera, which I am denied access to.

Third, I don't receive any literature directly to me; I do not receive union publications addressed to me, or contractual information.

But the main thing, the one thing I am really opposed to, is the fact that I am denied my basic right to vote on the contract. Now, here is a document that is going to influence my livelihood, that of my family, et cetera, and yet I cannot say whether I agree to it or I disagree to it. I am denied that.

If I may inject here, on grievances. I have been charged, like Mr. Hurley, in the last 12 years in varying degrees, complaints filed by local union officials against me, personally. One was very severe, in which they charged me with not submitting my agency fee payment, and in this case, my wife and I filed charges to the National Labor Relations Board in Buffalo. They found the union in violation because in fact, we have been paying, but the local was not submitting our payments to the international, or whatever their system was. And they approached the company in writing, a letter of which I have present with me today, asking for our suspension prior to dismissal, and charges like this. These are false charges, trying to get me fired, for the simple reason that I have taken a position just the opposite of theirs.

Now, I do not feel, sir, that agency feepayers should have to pay for grievances and the cost of grievances by a local—only if the individual requests the protection of the union local in some way—in other words, I say, "Hey, if I want you to represent me in front of the company, I will gladly pay you for your services." Because my experience is that my biggest enemy is the same individuals I am forced to go to if I want to use the grievance procedure to process a grievance. But right now, I feel I am paying for actions against myself. I do not think this is quite right, either.

Senator NICKLES. You also mentioned that you resented contributing to an organization which supported candidates that you would not support.

Mr. HAVAS. That is correct, sir.

Senator NICKLES. Has Communications Workers of America endorsed one of the Presidential candidates?

Mr. HAVAS. Yes, I believe they have endorsed Mr. Mondale.

Senator NICKLES. Have some of your dues ended up going into his campaign coffers?

Mr. HAVAS. I can just assume they have, sir. I do not know definitely that they have; I cannot say definitely that they have, from my personal knowledge. Anything in writing, I could not say.

Senator NICKLES. There is not a clause or provision with the Communication Workers that would allow you to not contribute a certain amount that might go to political candidates if you chose not to?

Mr. HAVAS. They have a rebate scheme that, through a real beautiful procedure that the average individual like myself would find difficult to pursue, I believe, whereby they would reimburse you a very small percentage. And this would actually be up to the local, I believe. They would rebate you whatever they felt they had spent on political candidates out of your——

Senator NICKLES. They do have a rebate procedure, and it is somewhat maybe discretionary.

Mr. HAVAS. It is ridiculous, as far as I am concerned. They are talking 2 or 3 percent. I think it has been proven that up to 79 percent has been used illegally or against the guidelines of the Supreme Court.

Senator NICKLES. Mr. Hurley, you made a pretty strong statement. You were involved in working with the union for several years, attained some leadership positions in it as steward and so on. You resigned when you discovered that you were now coerced or forced as a condition of employment to pay dues?

Mr. HURLEY. Yes; I immediately resigned as steward, and later, as it got worse and worse, I resigned from the union altogether. I was thinking maybe I could do something from within.

Senator NICKLES. Were there many other workers who were members of the union, but resented this clause?

Mr. HURLEY. Yes, there were.

Senator NICKLES. Was this a new clause?

Mr. HURLEY. It was. At the time, this was a new clause. It was a "maintenance of dues" clause, and it required if you were already a member of the union, you had to continue paying dues for the term of the contract. There was a 10-day escape period at the end of the contract.

Senator NICKLES. When you resigned, did you have to pay dues for the remainder of that contract?

Mr. HURLEY. Yes.

Senator NICKLES. Was the reason you resigned, because you felt like they were——

Mr. HURLEY. I resigned because my freedom to chose who I wanted to support, voluntarily, was taken away from me.

Senator NICKLES. Do you have an agency shop or a type of arrangement now that you have to continue paying dues, even though you are not a member?

Mr. HURLEY. Yes, right. Now they have it so that everybody in the bargaining unit must pay dues with the exception of the right to work law in the State of Virginia, members of bargaining unit in Virginia. The bargaining unit covers West Virginia, Virginia, Maryland, and Washington, DC, all of the C and P companies.

Senator NICKLES. In Virginia, they have a right to work law, and so it is not necessary for them to pay dues.

Mr. HURLEY. That is correct.

Senator NICKLES. But in Maryland, where you work, it is?

Mr. HURLEY. That is correct.

Senator NICKLES. You are still paying dues today, even though you feel like the organization is not representing your best interests?

Mr. HURLEY. That is correct—well, I am paying dues against my will. What my best interests are, I think, is what I decide they are. But I am forced to support the union, a union that has threatened the life and safety of myself and my family.

Senator NICKLES. What kind of threats?

Mr. HURLEY. That they are going to kill me, that they are going to injure my wife and children.

Senator NICKLES. Do you mean actual phone calls?

Mr. HURLEY. Yes, phone calls. And I reported it to the Anne Arundel County Police. They investigated it, and they got very little cooperation from other people as far as tracing the calls.

Senator NICKLES. Mr. Larson, in looking over your statement where you mentioned that you would agree with Mr. Kirkland and Mr. Trumka, I have found very little that you all may agree on. We may be making history today.

Mr. LARSON. Well, I believe it was in this subcommittee that Mr. Trumka made that pledge. We have no quarrel with it. This is something we could agree on—wipe the slate clean, and let's look at labor policy in the public interest, from the ground up, because the labor policy we have now is very badly flawed. And we are challenging Mr. Trumka and Mr. Kirkland to put up or shut up. If they really mean what they say, we are with them. Otherwise, we are prepared to continue to advocate amendments for the law, rather than a complete repeal.

Senator NICKLES. And that was primarily your thrust, originally, to make some amendments?

Mr. LARSON. That is correct.

Senator NICKLES. What would be the thrust of those amendments?

Mr. **Larson**. Well, the No. 1 need, as you are well aware, is to eliminate the authorization of compulsory unionism, which is in section 7, and which is the source of much of the problem of union corruption and union abuse. And you are a cosponsor of the bill that will do that. That bill—there are a couple of bills in your subcommittee—that would accomplish that end.

So this is the No. 1 priority, but we, as a matter of policy, oppose any grant by law to union officials of coercive power over employees. And there are very many ways in which union organizers have coercive power over employees under the National Labor Relations Act, and we have enumerated 10 or 11 of those.

Senator **Nickles**. Are you familiar with the *Ellis-Fails* case?

Mr. **Larson**. Yes.

Senator **Nickles**. Can you comment on what you think the impact of that case is?

Mr. **Larson**. Well, the impact over the long range of the Ellis-Fails decision will be profound. It will be a result that continues to gain momentum, because the Supreme Court has laid down a rule of policy that when implemented by employee protest will begin to ameliorate one of the most serious abuses of compulsory unionism, the support of noncollective bargaining costs by protesting compulsory dues payers. The implementation of this decision is not automatic. It gives employees a solid foundation now on which to challenge the misuse of their dues.

Senator **Nickles**. Do you think it should be codified; in other words, that we should put the thrust of the decision into legislation?

Mr. **Larson**. Yes, that would be a very good move, and I think that is an excellent suggestion.

One of the most important results of that decision which has not been widely noted is that the Supreme Court flatly rejected the union's phony internal rebate procedure under which the union sets itself up as the judge and jury as to how much money is spent for political and ideological purposes, and in the union's judgment, then, they will decide how much is to be rebated. And in fact, the union, to which both of these gentlemen are compelled to pay dues, in one situation actually mailed out rebate checks for one penny, after employees had gone through a very costly and difficult appeal process. And in a case in which Mr. Hurley is a part, the court has found on the other hand that 79 percent of the dues are being misspent for noncollective bargaining purposes.

So the Supreme Court has given us a very important foundation to proceed from.

Senator **Nickles**. Gentlemen, I appreciate your comments. You have been helpful to me and also to the committee.

Thank you very much.

Our next witness is Gene Willingham, from Ardmore, OK.

STATEMENT OF GENE WILLINGHAM, ARDMORE, OK

Mr. **Willingham**. First off, Senator Nickles, I would like to say that it is an honor and a privilege to be here.

Senator **Nickles**. Mr. Willingham, we appreciate your coming from the good State of Oklahoma.

Mr. **Willingham**. My name is Gene Willingham, and I am employed by XY Resources, Inc., Ardmore Industrial Airpark, Ardmore, OK. I am here to tell you why 32 employees and myself think we were not given our labor rights from the Fort Worth, Texas Labor Board.

To start, I was employed by Stromberg-Carlson Corp. on April 27, 1967. As a condition of employment, I had to join a union, the International Association of Machinists, because the majority of the employees voted it before I started working there. I belonged for 16½ years, and am past president of Local Lodge 2252, Ardmore, OK, two times elected by majority.

Stromberg-Carlson was sold to United Technology in the early part of 1982. Shortly after, United Technology sold Stromberg-Carlson to Plessey Telecommunications. In 1983, Plessey decided to close the Ardmore plant and moved the equipment and machinery they retained to their main plant in Lake Mary, FL.

Falcon Communications, Inc., in Malden, MO, purchased the remaining assets of the Ardmore facility in June 1983, and on January 1, 1984, started operating the plant under their subsidiary, which is named XY Resources.

On April 24, the company, XY, by direction from the NLRB of Forth Worth, posted a notice from the NLRB that read as follows: The National Labor Relations Act gives you as employees certain rights, including the rights to engage in self-organization; to form, join or help a union; to bargain collectively through a representative of your own chosing; to act together for collective bargaining or other mutual aid or protection; or, you have the right to refrain from any or all of these above.

We preferred to take the last one, to refrain from any or all of these things.

On May 23, we called the NLRB, Fort Worth, saying the majority of the employees did not want the union, and we were told to have a petition signed, which we did.

On May 24, 1984, with 33 out of 38 employees signing, we hand delivered the petition to the NLRB, Forth Worth, only to have it dismissed June 8, 1984, telling us we would have to appeal the case to the National Labor Relations Board in Washington, DC—which we did June 12, with copies to President Reagan, Senator Nickles, and others.

Our management, XY, had previously been directed by the Fort Worth NLRB to bargain with the union and a third session was scheduled for July 18 and 19.

On July 12, we the employees, requested our management in writing to cease negotiations with the union as the union did not represent the majority of the employees. The company adhered to this request. The union filed a complaint July 20 which was dismissed by the Fort Worth National Labor Relations Board August 10, 1984, citing the union's loss of majority status, et cetera.

The National Labor Relations Board in May of this year, in a decision involving Gourmet Foods, ruled "The majority rule principle is fundamental to the workers' rights to pick their own union or not, and must be followed even in the most exceptional cases."

We cannot understand why the majority rule principle did not apply with our petition of May 24 to the National Labor Relations Board, Fort Worth, TX.

We think laws should be fairly applied where the majority have certified by signed petition that they do not want a union.

Thank you.

[The prepared statement of Mr. Willingham, with attachments, follows:]

September 7, 1984

My Name is Gene Willingham

I am employed by XY Resources Inc. Ardmore Industrial Airpark, Ardmore Okla. and I'm here to tell you why 32 employee's and myself, think, we were not given our labor rights from the Fort Worth, Texas labor board.

To start, I was employed by Stromberg-Carlson Corp. April 27, 1967: as A condition of employment, I had to join a union, the I.A.M., because the majority of employee's voted it, before I started working there. I belonged for 16½ years and am past president of Local Lodge #2252, Ardmore, Oklahoma. Two, times elected by MAJORITY.

Stromberg-Carlson was sold to United Technology in the early part of 1982; shortly after, United Technology sold Stromberg-Carlson to Plessey Telecommunications. In 1983, Plessey decided to close the Ardmore plant and moved the equipment and machinery they retained to their main plant in Lake Mary, Florida.

Falcon Communications Inc. Malden, Missouri, purchased the remaining assets of the Ardmore facility in June 1983 and on January 1, 1984 started operating the plant under their subsidiary XY Resources.

April 24th the company (XY) by direction from the NLRB, Fort Worth posted a notice from the NLRB that read as follows. The National Labor Relations act gives you as employees, certain rights including the rights:

To engage in Self-Organization;
To form, join or help a union;
To bargain collectively through a representative of your own choosing;
To act together for collective bargaining or other mutual aid or protection;
To refrain from any or all of these things.

May 23rd we called the NLRB, Fort Worth saying the majority of employee's did not want the union and we were told to have a petition signed, which we did. On May 24, 1984, with 33 out of 38 employees signing we hand delivered the petition to the NLRB, Fort Worth, only to have it dismissed June 8, 1984; telling us we would have to appeal the case to the National Labor Relations Board Washington D.C. which we did June 12th with copies to President Reagan, Sen. Nickles and others.

Our management (XY) had previously been directed by the Fort Worth, NLRB to bargain with the union and a third session was scheduled for July 18th and 19th.

On July 12th we (the employees) requested our management (in writing) to cease negotiations with the union as the union did not represent the Majority of the employees. The company adhered to this request. The union filed a complaint July 20th which was dismissed by the Fort Worth National Labor Relations Board August 10, 1984, citing the union's loss of majority status etc.

The National Labor Relations Board in May of this year in a decision involving Gourmet Foods, ruled "The Majority rule principle is fundamental to the worker's right to pick there own union, or not, and must be followed even in the most exceptional cases".

We can't understand why "The Majority" rule principal did not apply with our petition of May 24th to the National Labor Relations Board, Fort Worth, Texas.

We think laws should be fairly applied where the majority have certified by a signed petition that they don't want a union.

Gene Willingham

Form NLRB-4722
(10-70)

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Act gives you, as employees, certain rights including the rights:

To engage in self-organization;
To form, join or help a union;
To bargain collectively through a representative of your own choosing;
To act together for collective bargaining or other mutual aid or protection;
✓ To refrain from any or all of these things.

WE WILL NOT in any manner interfere with, restrain or coerce our employees in the exercise of their rights mentioned above.

WE WILL NOT refuse to recognize and bargain collectively with the International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the following appropriate unit of employees:

> All production and maintenance employees at the employer's Ardmore, Oklahoma, plant, excluding all office clerical employees, professional and technical employees, employees in planning or purchasing functions, administrative employees, managerial employees, watchmen, guards, and supervisors as defined in the Act.

WE WILL, upon request, recognize and bargain collectively with the above-named union, as the exclusive collective bargaining representative of said employees with respect to their rate of pay, wages, hours of employment, and other terms and conditions of employment.

DATED: April 24, 1984 BY: XY RESOURCES, INC., A WHOLLY OWNED SUBSIDIARY OF FALCON COMMUNICATIONS
Name
George a Baker
Vice President General Manager
Title

Case No. 16-CA-11498

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office. Room 8A24, Federal Office Bldg., 819 Taylor St., Fort Worth, TX 76102
Telephone: 817/334-2947

NATIONAL LABOR RELATIONS BOARD
REGION 16
Room 8A24, Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102
Telephone (817) 334-2921

XY Resources, Inc.
3246 Ardmore Air Park
Ardmore, Oklahoma 73401

May 25, 1984

International Association of
Machinist & Aerospace Workers
1320 E. Seminary Dr.
Ft. Worth, TX 76115

Re: XY Resources, Inc.
Case No. 16-RD-1047
Examiner Assigned: Sharon Boles
Phone: 334-2004

Gentlemen:

A petition under Section 9(c) of the National Labor Relations Act has been filed with this office and a copy is attached. It is requested that the Union advise our Examiner immediately of its position regarding:

- —The appropriateness of the unit and the number of eligible employees therein;
- —Whether a hearing is necessary and whether a pre-hearing conference, the day before the hearing, would be helpful;
- —Whether a consent agreement is possible; or
- —Whether a disclaimer of interest will be filed.

Please advise our examiner immediately, either by phone or letter, of the representative or attorney, who will be handling your case. A "Notice of Designation of Representative" form is attached.

NOTICE OF ANTICIPATED HEARING

YOU ARE HEREBY NOTIFIED that if, after preliminary investigation, the undersigned has reasonable cause to believe that a question concerning representation exists withing the meaning of Section 9(c) and 3(b) of the Act, a Notice of Hearing will issue scheduling a formal hearing in this matter for June 8, 1984, unless a firm commitment is received from each party within FIVE DAYS from this date that it will waive hearing and enter into an election agreement or good cause is shown within FIVE DAYS why the Anticipated Hearing Date cannot be met.

The Employer will be contacted by phone concerning the following:

- --The commerce data sheet, which is attached and which should be completed and returned immediately;
- --The existence of any collective bargaining contract and/or whether there is any other union claiming recognition of these employees, and
- --Posting the enclosed "Notice of Employees." This notice apprises both employers and unions of their responsibilities to refrain from conduct which might impede the employees' freedom of choice and informs the employees of their rights.

It is requested that the Employer supply this office with an alphabetical list of the unit employees and their classifications as of the filing date of this petition. This list is for our confidential use in determining the petitioner's showing of interest and will not prejudice any position you may take later regarding the appropriateness of the unit.

In the event an election is agreed upon or directed, the Board requires that a list of names and addresses of all eligible voters be filed by the Employer with the undersigned, who will in turn make it available to all other parties. We are advising you of this requirement now so that there will be ample time to prepare it.

We are available to assist you in any way possible, and if you have any questions please call our Examiner. Your cooperation will be sincerely appreciated.

Sincerely,

Michael Dunn
Regional Director

Attachments:
- Petition
- Stipulated Agreement
- Commerce Questionaire
- Notice to Employees
- Notice of Designation
- Information Form

cc: Farlin Thomason, Box 101K Harbor Rt., Ardmore, OK 73401

5/24/84

WE THE UNDER SIGNED EMPLOYEE'S OF X Y RESOURCES LOCATED AT ARDMORE INDUSTRIAL AIR PARK WISH TO DISAFFILIATE OUR SELVES WITH THE INTERNATIONAL ASSOCIATION OF MACHINIEST & AERO SPACE WORKERS

Joan Mays	5-24-84
Rosemary Semore	5-24-84
Thomas [illegible]	5-24-84
Selvin D. Simon	5-24-84
David F. Myers	5-24-84
Bill K. Smith	5-24-84
James McClain	5-24-84
R.B. Shields	5-24-84
Ernest Conway	5-24-84
Waymon Finley	5-24-84
F.F. Henry	5-24-84
Mark Goff	5-24-84
Clarence Chapman	5-24-84
Gerald Anderson	5-24-84
Kevin E. Miller	5-24-84
Raymon F. Lewis	5-24-84
John T Roberts Jr.	5-24-84
Taylor Thompson	5-24-84
Judy McGehee	5-24-84
Patsy Payne	5-24-84
[illegible] Garrett	5-2[illegible]
Johnnie Faulkner	5-24-84
Paula G. Thomas	5-24-84
Arzelia I Shannon	- 5-24-84
Josephine Young	5-24-84
Billie Jane Wright	5-24-84

Dale Parker	5-24-84
Gene Willingham	5-24-84
L. J. Noble	5-24-84
Betty Myers	5-24-84
David Longfield	5-24-84
Vye Shackelford	5-25-84
Bill Wall	5-25-84

★ - Employees That signed petition - 33

2 - (★) Employees, Not Employed at Time of petition

NAME	JOB CLASSIFICATION
Beverly J. Anderson (★)	Production Assembler B
Gerald W. Anderson ★	Carpenter
Robert C. Bruce (★)	Production Assembler B
Clarence E. Chapman ★	Machinist
Johnnie Collinson ★	Maintenance Mechanic B
Ernest L. Conway ★	Production Assembler A
Evelyn J. Cribbs	Production Assembler B
Thomas G. Cullins ★	Electronic Technician B
Waymon H. Finley ★	Wire Extrusion Operator B
Dorthy J. Garrett ★	Production Assembler A
Linda F. Herring ★	Relay Adjustor A
Norman F. Lewis ★	Maintenance Mechanic A
David L. Loughridge ★	Stock Clerk B
James E. McClaine ★	Welder
Judy A. McGehee ★	Production Assembler A
Muriel J. Mays ★	Production Assembler A
Kevin E. Miller ★	Production Assembler B
Doris T. Moton	Relay Adjustor B
Elizabeth A. Moyers ★	Stock Clerk A
Davis F. Myers ★	Wire Machine Operator
Lavada J. Noble ★	Stock Clerk A
Dale J. Parker ★	Production Assembler A
Patsy S. Payne ★	Stock Clerk B
Sammie L. Pickens	Relay Adjustor A
John M. Pool ★	Machinist B
John T. Roberts ★	Metal Fab. Specialist
Veola Scott	Relay Adjustor B
Rosemary E. Semore ★	Production Assembler A
Seburn D. Semore ★	Wire Machine Operator A
Lilah V. Shackelford ★	Production Assembler A
Arzelia F. Shannon ★	Production Assembler A
Robert B. Shields ★	Production Painter A
Bill R. Smith ★	Maintenance Mechanic B
Essie L. Stevenson	Production Assembler A
Paula G. Thomas ★	Production Assembler A
Farlin Thomason ★	Maintenance Mechanic B
Billy D. Wall ★	Production Assembler A
Gene Willingham ★	Wire Machine Operator A
Billie J. Wright ★	Production Assembler A
Josephine Young ★	Electronic Technician B

Form NLRB-502

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE
CASE NO. 16-RD-1047
DATE FILED 5/25/84

INSTRUCTIONS.—Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

- ☐ RC-CERTIFICATION OF REPRESENTATIVE —A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees
- ☐ RM-REPRESENTATION (EMPLOYER PETITION)—One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner
- ☒ RD-DECERTIFICATION — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative
- ☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY—Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded
- ☐ UC-UNIT CLARIFICATION—A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees *(Check one)*
  - ☐ In unit not previously certified
  - ☐ In unit previously certified in Case No. ______
- ☐ AC-AMENDMENT OF CERTIFICATION—Petitioner seeks amendment of certification issued in Case No. ______

Attach statement describing the specific amendment sought

2. NAME OF EMPLOYER: XY Resources, Inc., A Wholly Owned Subsidiary of Falcon Communications
EMPLOYER REPRESENTATIVE TO CONTACT: Garland Pool
PHONE NO.: (405) 389-5411

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State and ZIP Code)*: 3246 Ardmore Air Park, Ardmore Oklahoma 73401

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*: Factory
4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Electronics

5. Unit Involved *(In UC petition describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All Production and maintenance employees at the employer's Ardmore, Oklahoma. Plant.

Excluded: All office clerical employees, professional and technical employees, employees in planning or purchasing funceions, administrative employees, manggerial employees, watchmen, guards, and supervisor as defined in the Act.

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT 38
PROPOSED (BY UC/AC) ______

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?* ☒ YES ☐ NO
*Not applicable in RM, UC, and AC

7a. ☐ Request for recognition as Bargaining Representative was made on ______ *(Month, day, year)* and Employer declined recognition on or about ______ *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*
NAME: International Association of Machinist and Aerospace workers
AFFILIATION: AFL-CIO
ADDRESS: 1320 E. Seminary Dr, Fort Worth TX 76115
DATE OF RECOGNITION OR CERTIFICATION: 1966

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ______ NO X

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF ______ *(Insert name)* A LABOR ORGANIZATION, OF ______ *(Insert address)* SINCE ______ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
NONE			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

______ *(Petitioner and affiliation, if any)*

By Farlin Thomason *(Signature of representative or person filing petition)*
Farlin Thomason
Individual *(Title, if any)*

Address Box 101K Harbor Rt.-Ardmore, OK 73401 (405) 226-5410

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

☆U.S. GOVERNMENT PRINTING OFFICE

I.O.

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PETITION

FORM EXEMPT UNDER
44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE
CASE NO 16- RC-1047
DATE FILED 5/25/84

INSTRUCTIONS – Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.
If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

☐ RC-CERTIFICATION OF REPRESENTATIVE – A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

☐ RM-REPRESENTATION (EMPLOYER PETITION) – One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☒ RD-DECERTIFICATION – A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY – Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ UC-UNIT CLARIFICATION – A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* ☐ In unit not previously certified
☐ In unit previously certified in Case No. ____________

☐ AC-AMENDMENT OF CERTIFICATION – Petitioner seeks amendment of certification issued in Case No. ____________
Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: XY Resources, Inc., A Whoely Owned Subsidiary of Falcon Communications
EMPLOYER REPRESENTATIVE TO CONTACT: Garland Pool
PHONE NO: (405) 223-5411

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*: 3246 Ardmore Air Park, Ardmore Oklahoma 73401

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*: Factory
4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Electronics

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All Production and maintenance employees at the employer's Ardmore, Oklahoma. Plant.

Excluded: All office clerical employees, professional and technical employees, employees in planning or purchasing funcions, administrative employees, manggerial employees, watchmen, guards, and supervisor as defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT
PRESENT 38
PROPOSED (BY UC/AC) ____

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?* ☒ YES ☐ NO
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☐ Request for recognition as Bargaining Representative was made on .... *(Month, day, year)* and Employer declined recognition on or about .... *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*
NAME: International Association of Machinist and Aerospace Workers
AFFILIATION: AFL-CIO
ADDRESS: 1320 E. Seminary Dr, Fort Worth TX
DATE OF RECOGNITION OR CERTIFICATION: 1966

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*:
10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*:

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ____ NO X
11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF .... *(Insert name)* A LABOR ORGANIZATION, OF .... *(Insert address)* SINCE .... *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE. (IF NONE, SO STATE.)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
NONE			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

.... *(Petitioner and affiliation, if any)*

By .... *(Signature of representative or person filing petition)*
Ferlin Thomason
Individual *(Title, if any)*

Address: Box 101K Harbor Rt., Ardmore, OK 73401 (405) 226-5410

WILLFULLY FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

I.O.

NATIONAL LABOR RELATIONS BOARD
REGION 16
Room 8A24, Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102

June 8, 1984

Mr. Farlin Thomason
Box 101K Harbor Rt.
Ardmore, Oklahoma 73401

Re: XY Resources, Inc.
Case No. 16-RD-1047

Dear Mr. Thomason:

The above-captioned case, petitioning for an investigation and certification of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered. did not contact any Employees.

On February 15, 1984, an unfair labor practice charge was filed in Case No. 16-CA-11498, which alleged that XY Resources was a successor to Stromberg-Carlson and that XY Resources had refused to recognize and bargain with the International Association of Machinists in an appropriate unit.

☆ As a result of the charge, the parties entered into a settlement agreement on April 30, 1984, wherein the Employer agreed to recognize and bargain with the Union. A notice was posted reflecting this on April 24 and is still posted. Some bargaining has occurred.

Employees Not The Employees

The Petitioner herein seeks an election to decertify the Union as the bargaining representative for the unit in which the Employer has agreed to bargain. It is well established that the Board must allow a "reasonable period of time" for good faith bargaining before a question concerning representation can be raised. This is true regardless of whether the obligation arises from a settlement agreement, a bargaining order, or voluntary recognition of the union. See *Brennan's Cadillac, Inc.*, 231 NLRB 225.

Since the unfair labor practice charge is still pending, and a reasonable period of time for bargaining has not occurred, I am therefore dismissing this petition.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the National Labor Relations Board, Washington, D. C. 20570, by close of business June 21, 1984.

Sincerely,

Jerome L. Avedon
Acting Regional Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosure: Form NLRB-4916

cc: XY Resources, Inc.
Attn: Mr. George Baker, President
P. O. Box 3246
Air Park Branch
Ardmore, OK 73401

Mr. Ted Pasley, Attorney
Wallace, Bickford, Pasley and Farabough
P. O. Box 1027
Ardmore, Oklahoma 73402

International Association of Machinists
1320 E. Seminary Drive
Fort Worth, TX 76115

Mr. J. D. Crow, Grand Lodge Rep.
International Association of Machinists
1111 W. Mockingbird Lane, Suite 1357
Dallas, Texas 75247

SSB/gg

Gene Willingham
711 A Street N. E.
Ardmore, Okla. 73401
Phone: (405) 226-0616

June 12, 1984

National Labor Relations Board
Washington, D.C. 20570

Dear Sir:

I am writing you this letter appealing the decision of the National Labor Relations Board of Ft. Worth, Texas case No. 16-RD-1047. RE: XY Resources Inc. employee's petition (enclosed). Please send me a review of this action. Did not Receive one

XY Resources a Subsidiary of Falcon Communications, Malden, Missouri purchased what parts and machines were left in Ardmore, Okla. after Stromberg Carlson moving what the company wanted to Florida. Stromberg Carlson is still in production under that name, in the state of Florida. In the agreement between Stromberg Carlson (a subsidiary of General Dynamics) and Washita Local Lodge No. 2252, International Association of Machinists & Areospace worker's AFL-CIO entered into the 22nd day of November 1981, I refer you to (successorship) Page #5, Article II (book enclosed) states this agreement is in effect unless the company moves from the state; which they did, yet the National Labor Relations Board in Ft. Worth ruled that XY Resources was the successor of Stromberg Carlson and that the I.A.M. was still in. BUT THE CONTRACT WAS OUT ???

The successorship clause is part of the contract — why? 1/2 & 1/2

Betty Moyers listed on the petition as Elizabeth A. Moyers telephoned the National Labor Relations Board in Ft. Worth stating that over 90% of the employees did not want the union back in. Betty was advised to have a petition signed and dated by the employees. Betty did and out of 38 employees only 5 would not sign. The petition was delivered by four employees to the National Labor Relation Board in Ft. Worth, Texas we were given a receipt and No. (enclosed) and told to wait. Now we receive a letter (enclosed) saying the petition is dismissed and we must bargain with the I.A.M.

The I.A.M. Representative Jim Waggoner came to Ardmore and proceded to negotiate a contract for the employees, (that don't want a contract) saying the employees here have no right to be in on the negotitations only I.A.M. members in good standing.

He had the company call an employee (one that didn't sign the petition) to help him. Thirty Three of the employee's disrupted the meeting and were told by Jim Waggoner, that we could elect (two) persons to set in on the negotiations. The employee's elected (two) present employees to sit in; (1) Elizabeth A. Moyers (2) Farlin Thomason, (3) Gene Willingham (alt.). During the meeting Jim Waggoner I.A.M. Representative asked Farlin Thomason to resign because of his attitude toward not having the union in again. Wednesday, June 6th he phoned Betty Moyers at her home and told her to resign and that anyone that signed the petition could not be on the negotiation committee, that he would pick his own.

The National Labor Relations Board from Ft. Worth states in their letter the case was carefully investigated and considered. The employee's working were not seen by a person from the Ft. Worth office. I think the investigation and considering was done in the office in Ft. Worth. Maybe that office sould be investigated. What the people would like to know is, why is the I.A.M. being crammed down our throats? when only 5 persons want it, and what can we do about it?

Why are we being forced to belong to an organization against our wishes???

The National Labor Relations Board, Ft. Worth won't even have an election by the employees. We have a Labor Board in Tulsa, Okla. and one in Oklahoma City why can't Oklahoma take care of Oklahoma problems.

The above actions indicates the I.A.M. is not Bargaining in Good Faith.

Sincerely,

Gene Willingham

U. S. President Reagan
cc: Congressman Wes Watkins
US Senator Don Nickles
US Senator David Boren

Elected to Sit in negotiations

Betty Moyers Betty Moyers

Farlin Thomason Farlin Thomason

Gene Willingham
711 A Street N. E.
Ardmore, Okla. 73401
Phone: (405) 226-0616

June 22, 1984

National Labor Relations Board
Washington, D.C. 20570

Gentlemen:

Pursuant to your telephone call to me today, June 22nd; this will confirm that the following have been mailed a copy of my letter to you dated June 12, 1984.

U S President - Reagan
Congressman - Wes Watkins
U S Senator - Don Nickles
U S Senator - David Boren

National Labor Relations Board
Region 16
Room 8A24, Federal Office Building, 819 Taylor St.
Fort Worth, Texas 76102

International Association of
Machinist & Aeorspace Workers
1320 E. Seminary Dr.
Ft. Worth, Texas 76115

XY Resources
P. O. Box 3246 Airpark Branch
Ardmore, Oklahoma 73401

Sincerely,

Gene Willingham
Gene Willingham

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

July 26, 1984

Re: XY Resources, Inc.
Case 16-RD-1047

Mr. Gene Willingham
711 A St., N.E.
Ardmore, OK 73401

Dear Mr. Willingham:

Your June 13, 1984, letter to President Reagan regarding the above case was referred to the National Labor Relations Board for consideration.

As you know, this matter is pending before the Board pursuant to your request for review. In these circumstances, it would not be appropriate for me to comment on this matter. Please be assured that this matter will be thoroughly reviewed by the Board and a decision arrived at as expeditiously as possible.

Very truly yours,

Joseph E. Moore

Joseph E. Moore
Associate Executive Secretary

FORM NLRB-4916
(5-77)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

INSTRUCTIONS FOR FILING REQUEST FOR REVIEW OF ADMINISTRATIVE DISMISSAL OF REPRESENTATION PETITION

Pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, you may obtain a review of this action by filing a request therefor with the National Labor Relations Board, addressed to the Executive Secretary, National Labor Relations Board, Washington, D.C., 20570. A copy of such request for review must be served on the Regional Director and each of the other parties to the proceeding. This request for review must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board in Washington, D.C., by the close of business on June 21, 1984. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. The request for extension of time should be submitted to the Executive Secretary of the Board in Washington, D.C., and a copy of any such request for extension of time should be submitted to the Regional Director, and to each of the other parties to this proceeding.

The request for review and any request for extension of time for filing must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding, and the copy must be served in the same or faster manner as that utilized in filing the request with the Board. When filing with the Board is accomplished by personal service, however, the other parties shall be promptly notified of such action by telephone, followed by service of a copy by mail or telegraph.

July 18, 1984

National Labor Relations Board
Washington, D.C. 20570

RE: XY Resources
Case No. 16-1047

Dear Sir:

Here is a copy of the letter presented to our General Manager (Mr. Baker) July 12th requesting that he (management) cease negotiations with the union as the union does not represent the majority of the employees of XY Resources.

We are hoping for resolution of this problem by your office.

Sincerely,

Gene Willingham
Gene Willingham

cc: Betty Moyers
Farlin Thomason
I.A.M. - Ft. Worth
National Labor Relations Board
XY Resources

July 12, 1984

XY RESOURCES
ATTN: MR BAKER
P.O. BOX 3246
AIR PARK BRANCH
ARDMORE, OKLA. 73401

DEAR MR. BAKER

WE REQUEST THAT THE NEGOTIATIONS FOR A CONTRACT WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS CEASES, AS WE THE WORKING UNIT FEEL THAT THEY ARE NOT NEGOTIATING FOR THE MAJORITY OF THE WORKING PEOPLE. THIS IS IN AGREEMENT BY /THE MAJORITY OF THE PEOPLE OF XY RESOURCES.

Betty Myers
Follin Thomason

NATIONAL LABOR RELATIONS BOARD
REGION 16
Room 8A24, Federal Office Building, 819 Taylor Street
Fort Worth, Texas 76102

August 10, 1984

International Association of
Machinists and Aerospace Workers, AFL-CIO
Attention: J.D. Crow
1111 W. Mockingbird Lane, Suite 1357
Dallas, TX 75247

Re: XY Resources, Inc.
Case No. 16-CA-11748

Dear Sir:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted at this time. For the reasons set forth in attachment "A" hereto, I am refusing to issue complaint in this matter.

The procedures for filing an appeal to this dismissal are set forth in the enclosed Form NLRB-4938 and such appeal must be received by close of business on August 23, 1984.

Sincerely,

Michael Dunn
Regional Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Enclosures: Forms NLRB-4938, NLRB-4767

cc: General Counsel, National Labor Relations Board, 1717 Pennsylvania Avenue, N. W., Washington, D. C. 20570
XY Resources, Inc., Div. Falcon Communications, Attention: George Baker.
P.O. Box 3246, Airpark Branch, Ardmore, OK 73401

XY RESOURCES, INC. DIV OF FALCON COMMUNICATIONS August 9, 1984
Case No. 16-CA-11748

ATTACHMENT "A"

The charge alleged the Employer violated Section 8(a)(5) of the Act by refusing to meet and bargain. The evidence did not support the charge. Rather, it appears the parties had been meeting and bargaining and had reached agreement on substantial portions of a new agreement including a grievance arbitration procedure. Third and fourth negotiating sessions had been arranged for July 18 and 19, 1984, when the Employer was presented with an objective showing of the Union's loss of majority status and subsequently cancelled its negotiating sessions. A reasonable period of time for bargaining had elapsed at the time the Employer withdrew recognition, there was no evidence of any bad faith bargaining; therefore, the Employer did not unlawfully refuse to bargain when presented with a good faith doubt based on objective consideration of the Union's majority representative status. Tajon, Inc., 269 NLRB No. 62 (1984) and Brennan's Cadillac, 231 NLRB 225 (1977).

This was obviously a ruling in the Employee's favor & only after the Wash NLRB Request for [illegible]

NLRB
1717 PENNSYLVANIA AVE #250
WASHINGTON DC 20570 10AM

Western Union Mailgram®

4-060120U223006 08/10/84 ICS WA16614 OCKA
01183 MLTN VA 08/10/84

▶ GENE WILLINGHAM
711 A ST NE
ARDMORE OK 73401

RE XY RESOURCES INC., 16 RD 1047 PETITIONER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ADMINISTRATIVE DISMISSAL IS DENIED AS IT RAISES NO SUBSTANTIAL ISSUES WARRANTING REVIEW. THE DISMISSAL IS AFFIRMED FOR THE REASONS SET FORTH IN THE REGIONAL DIRECTOR'S LETTER OF 8 JUNE 1984. BY DIRECTION OF THE BOARD: (MEMBER HUNTER, DISSENTING, WOULD REMAND THE CASE TO THE REGIONAL DIRECTOR TO OBTAIN ADDITIONAL FACTS WITH REGARD TO THE BARGAINING THAT HAS TAKEN PLACE) . DATED 10 AUG 1984

ROBERT VOLGER,DEP XEC SECY
NLRB WSH DC

04960
1850 EST

MGMCOMP MGM

ORRIN G. HATCH, UTAH, CHAIRMAN

ROBERT T. STAFFORD, VT.
DAN QUAYLE, IND.
DON NICKLES, OKLA.
GORDON J. HUMPHREY, N.H.
JEREMIAH DENTON, ALA.
LOWELL P. WEICKER, JR., CONN.
CHARLES E. GRASSLEY, IOWA
JOHN P. EAST, N.C.
PAULA HAWKINS, FLA.

EDWARD M. KENNEDY, MASS.
JENNINGS RANDOLPH, W. VA.
CLAIBORNE PELL, R.I.
THOMAS F. EAGLETON, MO.
DONALD W. RIEGLE, JR., MICH.
HOWARD M. METZENBAUM, OHIO
SPARK M. MATSUNAGA, HAWAII
CHRISTOPHER J. DODD, CONN.

RONALD F. DOCKSAI, STAFF DIRECTOR
KATHRYN O'L. HIGGINS, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON LABOR AND
HUMAN RESOURCES
WASHINGTON, D.C. 20510

August 14, 1984

Mr. Gene Willingham
XY Resources, Inc.
711 A Street, N.E.
Ardmore, Oklahoma 73401

Dear Mr. Willingham:

This is to confirm that you will testify at our Labor Subcommittee oversight hearing scheduled on September 18, 1984 regarding the Taft-Hartley Act and Railway Labor Act. The hearing will begin at 9:30 a.m. in room 485 of the Russell Senate Office Building. Your oral statement will be limited to five minutes.

One hundred copies (100) of the written statement should be hand delivered to the Labor Subcommittee in room 608 of the Hart Senate Office Building by 5:00 p.m. on Thursday, September 13th.

With best wishes.

Sincerely,

Don Nickles
Chairman
Subcommittee on Labor

DN/ld

Wall [illegible] [illegible]
[illegible] May [illegible]

NLRB Overturns Decision Backing Non-Majority Unit

By CATHY TROST
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—The National Labor Relations Board, overturning an earlier decision, ruled that it can't order an employer that has committed serious unfair labor practices to bargain with a union that doesn't represent the majority of workers.

A more activist, Democrat-controlled board ruled in a separate case in 1982 that it did have the authority to issue a non-majority bargaining order. But the NLRB's new conservative majority, in a 3-1 decision, said such a move was tantamount to "governmental imposition of a choice of representative."

Management attorneys said the issue has been debated by the board and in the courts for years without consensus. They predicted the Supreme Court ultimately would decide whether the board has such powers. In the most recent court ruling, a federal appeals court late last year refused to enforce the board's 1982 decision, warning that "employees may be saddled for a prolonged period with a union not enjoying majority support."

Stephen Schlossberg, the United Auto Workers' Washington counsel, said the decision in the latest case wasn't unexpected from a board that has recently reversed several of labor's past gains in organizing and bargaining. "It's one more nail in the coffin," he said.

The case concerned Gourmet Foods Inc., a St. Paul, Minn.-based specialty foods company that threatened to fire its employees and close the plant when they sought representation by a Teamsters union local, according to an administrative law judge's findings. Even though a labor agreement wasn't ever reached, the Teamsters argued that the board should order Gourmet Foods to bargain because the company's retaliatory moves had been so "outrageous and pervasive."

Similar tactics employed by Conair Corp., a New Jersey manufacturer of hair-care appliances and products, to combat union-organizing efforts among its employees caused the NLRB to issue its 1982 decision. In that 3-2 ruling, the board ordered Conair to bargain with the International Ladies Garment Workers Union, even though it didn't have majority representation among the workers.

But in this latest decision involving Gourmet Foods, the board said the majority-rule principle is fundamental to the workers' right to pick their own unions, and must be followed even in the most "exceptional" cases.

John Irving, a management attorney, said, "Those who say the board has the power (to issue a non-majority bargaining order) would assume that where an employer commits serious unfair labor practices that employees are really better off with a union, and if given an uncoerced choice, they would opt for a union. But that's a conclusion for which there really is no basis."

In dissent from the majority opinion, Don Zimmerman, an independent who was appointed to the board by President Carter, pointed to a controversial 1969 Supreme Court decision that identified a class of unfair labor practices so coercive in natur that they prevented union elections from being held. If the board doesn't exercise its power to correct such cases, he argued, i fails in its obligation to "preserve employe rights to self-organization and free choice o a collective bargaining representative."

Senator NICKLES. Mr. Willingham, I appreciate your statement. Let me make sure that I have the scenario of events right.

The plant was closed, and then XY Co. was kind of reorganized, and it was basically shut down for about 6 or 7 months?

Mr. WILLINGHAM. Well, to sum it up, I have all the papers and letters from the Washington Board.

Senator NICKLES. We will include all that. I am just trying to get the scenario. Was the plant down from those months of June through——

Mr. WILLINGHAM. I was one of the last employees laid off, you know, having seniority, and I was laid off November 11, 1983, and there were approximately eight employees left in the plant.

Senator NICKLES. So there was somewhat of a skeleton crew.

Mr. WILLINGHAM. No; they went with me. They went the same time I did. The plant was closed down, was not in production or anything.

Senator NICKLES. And then, with the new company, did it just come out of the blue or something that the NLRB from Fort Worth had told the company they needed to negotiate?

Mr. WILLINGHAM. Well, if I may, this resulted in a successorship clause that was in the union contract with Stromberg-Carlson, which said if the company merged, or its successors or assigns of the company sale or transfer in ownership, assumed the contract with the union within the State of Oklahoma. Well, Stromberg-Carlson moved what machinery and things that they needed from Ardmore, OK, to Lake Mary, FL, which they are in production at this time, under the same name, Stromberg-Carlson, and selling telecommunications equipment for telephone companies.

On the basis of the NLRB in Fort Worth, they said that—they ruled XY was the successor of the company, but the contract was out and for them to negotiate a new one. I maintain that if the contract is out, so is the successorship, because it is part of the contract.

Senator NICKLES. What justification did the NLRB from Fort Worth give when you had a petition with 33 out of 38 employees saying that you did not want to have that union represent you? How could they just say you had to appeal the case?

The net result, though, was you did appeal the case, and you were successful in your appeal.

Mr. WILLINGHAM. No; they sent me a letter, the NLRB in Fort Worth, on February 15, and said—well, do you want me to start at the top of it——

Senator NICKLES. No; you do not have to read it all.

Mr. WILLINGHAM. Anyway, the more essential part of it, there was an unfair labor practice filed against XY Resources, you know, in February, and they said,

> Since the unfair labor practice charge is still pending, and the reasonable period of time for bargaining has not occurred, I am therefore dismissing this petition pursuant to the National Labor Relations Board rules and regulations. You may obtain a review of this action by filing an appeal with the National Labor Board in Washington, DC by close of business June 21, 1984.

Which I did.

I wrote a letter to the National Labor Board here in Washington, and told them that I was writing this letter to appeal a decision of the National Labor Relations Board of Fort Worth, TX, on XY Resources, that they were the successor to that company, and would they please send me a review of this action. And they had the proper forms to fill out, which I did, but I did not ever hear anything from them.

Senator NICKLES. So I was incorrect. They denied your petition, which was signed by 33 out of 38, and it basically said you did not want a union. You have appealed. Has the NLRB in Washington handled your appeal yet, or is that still pending?

Mr. WILLINGHAM. Yes, sir; I have the answer to that.

> Dear Mr. Willingham, your June 13th, 1984 letter to President Reagan regarding the above case was referred to the National Labor Relations Board for consideration. As you know, this matter is pending before the Board pursuant to your request for review. In these circumstances, it would not be appropriate for me to comment on this matter. Please be assured that this matter will be thoroughly reviewed by the Board and a decision arrived at as expeditiously as possible.

Senator NICKLES. So it is still pending?

Mr. WILLINGHAM. No; they sent me a letter to the effect that they reviewed the case and were going to leave it to the Fort Worth NLRB Board for their decision.

Senator NICKLES. Was the petition you signed a decertification petition—do you remember—or was it just 33 out of 38 that said that they——

Mr. WILLINGHAM. Well, we had 38 employees at that time, and the petition reads,

> We, the undersigned employees of XY Resources, located at Ardmore Industrial Airpark, wish to disaffiliate ourselves with the International Association of Machinists and Aerospace Workers.

And there is a copy of the petition and so on, that I would like to leave with you, if you want it.

Senator NICKLES. We will.

Mr. WILLINGHAM. At this time, I would like to say, if I may, that whenever a labor board directs an employer to negotiate with a union, they bypass the people who are working and are the employees. They should have no right whatsoever, to do so, but whatever they agree on, the employees are the ones who have to pay the union dues, not the employer.

Well, my theory there is that if an employee gives 8 hours' work for 8 hours' pay, they do not need a union. If a person gives 6 hours' work for 8 hours' pay, they need a union.

I have been a union president twice, and most of my affiliation was with people who did not want to work, with grievances and things like this. A larger company will probably spend anywhere from $50,000 to $60,000 a year just in arbitrations and time lost with employees and so on. And a new employer going into business, when they go to court with a union, that has over 1 million members, which pay an average income dues of about $15 a month, which is $15 million per month income—a newly acquired plant, you can hardly cope with them. That will eventually put you out of business and if you are trying to get new products and things, if the union is in there, they contest everything that you do about labor grades and things like this. You can nickel and dime them to death or until they will either leave or go out of business. They want to run the company's business, but they don't want to buy it.

They have plenty of money that they could buy companies and run them if they wanted to.

Senator NICKLES. What is the status now? Are there any negotiations going on right now, or is it on hold, awaiting the decision from NLRB?

Mr. WILLINGHAM. It is on hold.

Senator NICKLES. You and your fellow employees are continuing to work, but there are no active negotiations going on.

Mr. WILLINGHAM. We do not pay any union dues, no.

Senator NICKLES. And you are not paying dues. And the majority of 33 out of 38 do not want to pay dues?

Mr. WILLINGHAM. Right.

Senator NICKLES. Please leave us copies of that, and we will check on the status of your case and see if we might be able to help you cut through some of the redtape.

I appreciate your appearance before the committee today.

Mr. WILLINGHAM. Well, Senator, I am happy to be here.

Senator NICKLES. Our next witness is Mr. Laurence G. Russell, from Amarillo, TX.

Mr. Russell, welcome. We appreciate your appearance before the subcommittee today.

STATEMENT OF LAURENCE G. RUSSELL, SPECIAL AGENT/POLICE OFFICER, SANTA FE RAILROAD, AMARILLO, TX, ACCOMPANIED BY ROBERT GORE, COUNSEL

Mr. RUSSELL. Thank you, and good morning, Senator.

My name is Larry Russell, and I am a special agent employed by Santa Fe Railroad. I am accompanied by Robert Gore, my counsel during the legal fight to get an election.

For the past 3½ years, a majority of the Santa Fe Railroad police officers have been trying to exercise their rights under the Railway Labor Act and obtain an election to get rid of the union serving as our bargaining agent. To date, we have been unsuccessful, even though the courts have ruled that we have a right to such an election. We welcome this opportunity to alert Congress to our problems and hope that amendments to the Railway Labor Act will remove obstacles to employee freedom of choice.

Some 40 years ago, the Santa Fe Railroad police officers voted to be represented by a labor union. Although none of the employees who originally voted for union representation are still in the bargaining unit, and a majority of the present employees do not want to be represented by any labor union, we cannot get the National Mediation Board to hold an election. For whatever reason, this Federal agency believes that once railroad or airline employees are represented by a labor union, they must remain represented.

I would also point out that the collective bargaining agreement negotiated by our union contains a union-shop provision requiring that, to keep our jobs, we either join the union or financially support it.

Presently, each of us is required to pay about $27.50 a month for representation. This may not seem like much, but when you work out all the mathematics, we have paid some $230,000 in compulsory union dues—all for representation that we do not want. And, if we stop paying, we will be fired.

To add insult to injury, the union has used these compulsory dues to finance its opposition to our election application. Although we do not like to be compelled to financially support our adversaries, we can at least understand the union's motives—power and money.

What we have not been able to understand is why the Federal agency—created to protect employee rights—will not allow us to exercise our statutory right to freedom of choice. It is my understanding that Congress created the Mediation Board to act as an impartial referee in disputes over whether employees desire union representation.

Senator, I can testify from firsthand knowledge that at the present time, the Mediation Board is neither a referee nor impartial. In representation cases, the Mediation Board is a full-fledged player, with the goal of ensuring that all railroad and airline employees enjoy the benefits of collective bargaining—whether they want it or not.

With this goal in mind, ever decision of the present Mediation Board is tailored to ensure that the maximum number of employees become represented or remain represented by labor unions.

Although the Railway Labor Act specifies that the employees are to select whether or not they will be represented, the present Mediation Board will not hold an election if the employees intend to reject further union representation. The Board—far from being an impartial referee—tailors both its procedural rules and holdings to ensure that it can control the outcome of any election.

Our case is a perfect example. After being represented by a union for almost 40 years, a majority of the Santa Fe Railroad police officers desired to become nonunion. We decided that we would be better off being unrepresented and working "with" management, rather than being its adversary. Our problem was how to get rid of the union.

The National Labor Relations Act contains a provision which allows employees to petition the National Labor Relations Board for an election to "decertify" the union and become unrepresented. Unfortunately, the Railway Labor Act does not contain any formal method to "vote-out" or "decertify" the union. Although there was not a formal method to decertify railroad unions, historically employees selected a "strawman" representative to replace the union. Once elected, the "strawman" negotiated away or abrogated the existing collective bargaining agreement and then ceased to be the employees' representative. Although a little more awkward, this procedure allowed railroad and airline employees to have the same rights enjoyed by employees covered by the National Labor Relations Act. At least, that was so until a few years ago.

In March 1981, the Santa Fe police officers decided to elect me as the "strawman" for the express purpose of negotiating new working conditions and then ceasing to be their representative. I obtained authorization cards from a majority of the employees and then filed an election application with the Mediation Board. Shortly thereafter, our nightmare began.

First, the Mediation Board said I had to register as a "labor organization" with the Department of Labor before it would hold an election. We filed the required reports with the Department of Labor. Next, the Mediation Board wanted additional authorization cards to demonstrate that a majority of all employees below the rank of captain desired the election. I complied and filed additional cards covering supervisors, even though I did not believe these agents were in the bargaining unit.

During the Mediation Board's investigation, we made it very clear that I was being elected as a "strawman" for the purpose of replacing the union, negotiating away the existing collective bargaining agreement, and then ceasing to be the "representative". The Board's investigator and the union took the position that the election should not be held because I lacked the "intent to represent." Shortly thereafter, the Mediation Board dismissed my application, holding that since I lacked the "intent to represent," there was no "representational dispute" and thus no need for an election under the act.

We obtained legal assistance and filed suit in Federal district court. In one cause of action, we alleged that the Mediation Board violated its statutory duty by not allowing employees to express their desires regarding who should be their representative. The other cause of action—against the union in Santa Fe—sought to stop further enforcement of the union-shop provision in the collective bargaining agreement. I will not burden you with the long, drawnout legal procedures which followed. The chart on display clearly depicts the struggle which resulted from the Mediation Board's decision.

A result of our ultimate victory in the court battles is attached to this statement. In its decision, the fifth circuit pointed out that the Mediation Board: First, had breached its clear and statutory mandate; second, that the mediation board was doing nothing but playing games with the plaintiffs and with the Court, and third, that it was a perversion of the truth for the Board to insist that it had conducted the investigation and discharged its duties under the act.

Later, the fifth circuit, in denying the union's request for a stay of mandate pending possible Supreme Court review, stated that:

> Balancing the justification for staying the issuance of the mandate against the interests of the plaintiffs, the reasons for denying the stay are much more compelling. The plaintiffs have sought a determination regarding the union's status as their collective bargaining representative to which they have been entitled, according to our determination, since March 1981. Any further delays should not be suffered by them.

Given these strong statements by the court of appeals, one would think that the Mediation Board would have immediately taken the necessary steps to ensure employee freedom of choice. Unfortunately, that is not the case. The initial fifth circuit ruling was issued 1 year ago this week. The Mediation Board has sought an extension of time in which to seek rehearing en banc but then never sought review. Although it did not appeal the fifth circuit's ruling, the Mediation Board would not process our application because the union was pursuing its appeal. Even after the fifth circuit denied the union's request for rehearing and stay of mandate, the Mediation

Board refused to renew its investigation because the court of appeals had remanded the case to the district court for it to issue the order to the Mediation Board. And, even after the district court issued its order remanding the case to the Mediation Board, the Board took no action until our legal counsel wrote a strong letter to each member of the Board, as well as to the White House, and the members of the fifth circuit panel which had reversed the Board. A copy of this letter is attached to this statement.

The day after our letter was hand-delivered to the Board, it finally began to take action to renew its investigation. However, since that time, the Mediation Board and its investigator have used every administrative trick in the book to delay an election. First, they lost all of the authorization cards which we had filed some 3 years earlier. And, although the names of the employees who sign authorization cards is considered very confidential, the union suddenly had a copy of our letter to the Mediation Board identifying the assistant division special agents who had signed cards. Although we cannot prove that this information was leaked by the Board or its employees, we remain highly suspicious.

One of the issues during the renewed investigation is whether the ADSA's should be allowed to vote in any election. Although all of the parties—the union, the carrier, and the employees—have agreed that the ADSA's should be excluded from the election, the Mediation Board continues to debate this issue. The employees do not care one way or the other. A majority of the ADSA's have signed authorization cards, indicating that they desire me to be their representative. Nonetheless, the Mediation Board uses this contrived issue to hold up the election.

Another contrived issue is whether the election should be delayed because at some future date, the proposed Santa Fe/Southern Pacific merger may be approved by the Interstate Commerce Commission, and the carrier may at some future date actually merge the two groups of employees. When we initially filed our application, there was not even an inkling of the Santa Fe/Southern Pacific merger, and even if it eventually takes place, it will most likely be years from now. And, even then, there is no indication that the two carriers will ever merge the employee bargaining units. Why should we be denied our statutory rights because some possible future acts might or might not affect the bargaining unit? Especially when the delay to date has been caused by the failure of the Mediation Board to carry out its statutory duties.

One final comment about the Mediation Board's renewed investigation. Early this spring, the local Texas attorney representing us during the Board's investigation underwent two major operations. Although these operations precluded him from travel, they did not prevent him from practicing law in Amarillo. Although the Board was aware that our attorney could not travel and that we lacked the financial resources to travel to distant hearing sites, the Board nevertheless scheduled the hearing for Chicago and refused to change the site after our protests. They did offer to postpone the hearings. We did not attend the hearings, but submitted our testimony by affidavit. The Board was very upset and almost a month went by while it decided whether to accept our affidavits. Anything to delay the election.

Senator, I could go on with many more examples of how this Federal agency uses its unreviewable discretion to block employees' freedom of choice. However, I think you have probably heard enough to understand the plight of railroad and airline employees who are unable to exercise their statutory rights. A right means nothing if it cannot be exercised. And, in our view, employee rights mean nothing to the National Mediation Board.

Based on our experiences with the National Mediation Board, we recommend the following:

Amend the Railway Labor Act to provide employees with a statutory right to decertify their bargaining representative; and

Amend the Railway Labor Act to provide for judicial review of Mediation Board decisions so that employees can finally obtain impartial referees.

Senator, on behalf of my fellow employees, I would like to thank you for this opportunity to tell our story. Some of us were beginning to lose faith in our Government; 3½ years of dealing with the Mediation Board can have that effect.

Hopefully, this brief review of our problems with the Mediation Board will assist the committee and Congress in improving the effectiveness of our railway labor laws.

Thank you.

[The prepared statement of Mr. Russell follows:]

STATEMENT OF LAURENCE G. RUSSELL, SPECIAL AGENT (POLICE OFFICER), ATCHISON, TOPEKA AND SANTA FE RAILWAY CO., DURING OVERSIGHT HEARINGS OF UNITED STATES SENATE LABOR SUBCOMMITTEE REGARDING THE RAILWAY LABOR ACT ON TUESDAY, SEPTEMBER 18, 1984.

Good morning, Senators. My name is Larry Russell and I'm employed as a Special Agent/Police Officer by the Santa Fe Railroad. For the past three-and-a-half years a majority of the Santa Fe railroad police officers have been trying to exercise their rights under the Railway Labor Act and obtain an election to get rid of the union serving as our bargaining agent. To date we have been unsuccessful, even though the courts have ruled that we have a right to such an election! We welcome this opportunity to alert Congress to our problems and hope that amendments to the Railway Labor Act will remove obstacles to employee freedom of choice.

Some forty-one years ago, the Santa Fe railroad police officers voted to be represented by a labor union. Although none of the employees who originally voted for union representation are still in the bargaining unit -- and a majority of the present employees don't want to be representated by any labor union -- we can't get the National Mediation Board to hold an election. For whatever reason, this federal agency believes that once railroad or airline employees vote to be represented by a labor union they must remain represented!

I would also point out that the collective-bargaining agreement negotiated by "our" union contains a union-shop provision requiring that, to keep our jobs, we either join the union or financially support it. Presently each of us is required to pay about $27.50 a month for representation. This may not seem like much, but when you work out all the mathematics, we have paid some $231,000 in compulsory union dues -- all for representation we don't want. (200 agents paying $27.50/month for 42 months.) And, if we stop paying we will be fired! To add insult to injury, the union has used these compulsory dues to finance its opposition to our election application. Although we don't like to be compelled to financially support our adversary, we can at least understand the union's motives. Power and money.

What we have not been able to understand is why the federal agency -- created to protect employee rights -- will not allow us to exercise our statutory right to freedom of choice. It is my understanding that Congress created the Mediation Board to act as an "impartial referee" in disputes over whether employees desire union representation.

Senators, I can testify from first hand knowledge that at the present time the Mediation Board is neither a referee nor impartial! In representation cases, the Mediation Board is a full-fledged player with the goal of ensuring that all railroad and airline employees enjoy the benefits of collective bargaining -- whether they want it or not. With this goal in mind, every decision of the present Mediation Board is tailored to ensure that the maximum number of employees become represented or remain represented by labor unions. Although the Railway Labor Act specifies that the employees are to select whether or not they will be represented, the present Mediation Board will not hold an election if the employees intend to reject further union representation. The Board -- far from being an impartial referee -- tailors both its procedural rules and holdings to ensure that it can control the outcome of any election.

Our case is a perfect example. After being represented by a union for almost 40 years, a majority of the Santa Fe railroad police desired to become non-union. We decided that we would be better off being unrepresented and working "with" management rather than being its adversary. Our problem was how to get rid of the union.

The National Labor Relations Act contains a provision which allows employees to petition the National Labor Relations Board for an election to "decertify" the union and become unrepresented. Unfortunately the Railway Labor Act does not contain any formal method to "vote-out" or "decertify" the union. Although there was not a formal method to decertify railroad unions, historically employees elected a "strawman" representative to replace the union.

Once elected, the "strawman" negotiated away or abrogated the existing collective-bargaining agreement and then ceased to be the employees' representative. Although a little more awkward, this procedure allowed railroad and airline employees to have the same rights enjoyed by employees covered by the National Labor Relations Act. At least that was the case until a few years ago.

In March of 1981, the Santa Fe police officers decided to elect me as a "strawman" for the express purpose of negotiating new working conditions and then ceasing to be their representative. I obtained authorization cards from a majority of the employees and then filed an election application with the Mediation Board. Shortly thereafter our nightmare began.

First, the Mediation Board said I had to register as a "labor organization" with the Department of Labor before it would hold an election. We drafted a Constitution and By-Laws and filed the required reports with the Department of Labor. Next, the Mediation Board wanted additional authorization cards to demonstrate that a majority of all employees below the rank of Captain desired the election. I complied and filed additional cards covering Assistant Division Special Agents (ADSA) -- even though I did not believe these agents were in the bargaining unit.

During the Mediation Board's investigation we made it very clear that I was being elected as a "strawman" for the purpose of replacing the union, negotiating away the existing collective-bargaining agreement, and then ceasing to be the "representative." The Board's investigator and the union took the position that the election should not be held because I lacked the "intent to represent." Shortly thereafter, the Mediation Board dismissed my application holding that since I lacked the "intent to represent" there was no "representational dispute" and thus no need for an election under the Act.

We obtained legal assistance and filed suit in federal district court. In one cause of action, we alleged that the Mediation Board violated its statutory duty by not allowing employees to express their desires regarding who should be their representative. The other cause of action -- against the union and Santa Fe -- sought to stop further enforcement of the union-shop provision in the collective-bargaining agreement. I will not burden the Committee with the long-drawn out legal proceedings which followed. The chart on display clearly depicts the struggle which resulted from the Mediation Board's decision. A copy of our ultimate victory in the court battles is attached to this statement and can be found at 714 F.2d 1332 (5th Cir. 1983), cert. denied, 104 S.Ct 2385 (1984). In its decision, the Fifth Circuit pointed out that the Mediation Board: (1) had "breached its clear statutory mandate," (2) that its position was Orwellian, Kafkaesque and "nothing more than playing games with the plaintiffs and with the Court," and (3) it was a "perversion of the truth for the Board to insist that it had conducted the investigation and discharged its duties under the Act." 714 F.2d at 1341, 1342 nn. 11, 12, and 1347. Later, the Fifth Circuit in denying the union's request for a stay of mandate pending possible Supreme Court review, stated that "balancing the justification for staying the issuance of the mandate against the interests of the plaintiffs-applellants, the reasons for denying the stay are much more compelling. The plaintiffs-appellants have sought a determination regarding the union's status as their collective bargaining representative to which they have been entitled, according to our determination, since March 1981. Any further delays should not be suffered by them." Fifth Circuit Order dated December 20, 1983, attached hereto.

Given these strong statements by the Court of Appeals, one would think that the Mediation Board would have immediately taken the necessary steps to ensure employee freedom of choice. Unfortunately, that is not the case. The initial Fifth Circuit ruling was issued one year ago this week. The Mediation Board sought an extension of time in which to seek rehearing en banc but then never sought review. Although it did not appeal the Fifth Circuit's ruling the Mediation Board would not process our application because the union was pursuing its appeal. Even after the

Fifth Circuit denied the union's requests for rehearing and stay of mandate, the Mediation Board refused to renew its investigation because the Court of Appeals had remanded the case to the District Court for it to issue the Order to the Mediation Board. And, even after the District Court issued its order remanding the case to the Mediation Board, the Board took no action until our legal counsel wrote a strong letter to each member of the Board -- as well as the White House and the members of the Fifth Circuit panel which had reversed the Board. A copy of this letter is attached to this statement.

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Another contrived issue is whether the election should be delayed because at some future date the propsed Santa Fe/ Southern Pacific merger may be approved by the Interstate Commerce Commissision and the carriers may at some future date actually merge the two groups of employees. When we initially filed our application, there was not even an inkling of the Santa Fe/Southern Pacific merger and even if it eventually takes place, it will most likely be years from now. And even then, there is no indication that the two carriers will ever merge the employee bargaining units. Why should we be denied our statutory rights because some possible future acts might or might not affect the bargaining unit? Especially when the delay to date has been caused by the failure of the Mediation Board to carry out its statutory duties.

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Senators, I could go on with many more examples of how this federal agency uses its unreviewable discretion to block employee freedom of choice. However, I think you have probably heard enough to understand the plight of railroad and airline employees who are unable to exercise their statutory rights. A right means nothing if it cannot be exercised. And, in our view, employee rights mean nothing to the National Mediation Board.

Based on our experiences with the National Mediation Board, we recommend the following:

(1) Amend the Railway Labor Act to provide employees with a statutory right to "decertify" their bargaining representative.

(2) Amend the Railway Labor Act to provide for judicial review of Mediation Board decisions so that employees can finally obtain impartial referee.

Senators, on behalf of my fellow employees I would like to thank you for this opportunity to tell our sad story. Some of us were beginning to lose faith in our government; three-and-a-half years of dealing with the Mediation Board can have that effect. Hopefully this brief review our problems with the Mediation Board will assist the Committee and Congress in improving the effectiveness of our labor laws. Thank you.

/s/ Laurence G. Russell

ATTACHMENTS

Laurence G. RUSSELL, William L. Hanna and Eddie D. Langwell, Plaintiffs-Appellants,

v.

NATIONAL MEDIATION BOARD, the Atchison, Topeka and Santa Fe Railway Company, et al., Defendants-Appellees.

No. 82-1466.

United States Court of Appeals,
Fifth Circuit.

Sept. 22, 1983.

Rehearing and Rehearing En Banc
Denied Nov. 28, 1983.

In a suit brought by railroad police and special agents for declaratory judgment and for relief in mandamus against the National Mediation Board, the United States District Court for the Northern District of Texas at Amarillo, Mary Lou Robinson, J., found that investigation by the Board was sufficient and within scope of authority and met constitutional due process requirements. Plaintiffs appealed. The Court of Appeals, E. Grady Jolly, Circuit Judge, held that: (1) there are no qualifiers attached to Railway Labor Act's simple definition of "representative," nor does Act require collective representation, and "representative" of class of employees is simply person or union designated to act on their behalf, to accomplish what they seek to accomplish, and is not necessarily man for all seasons; (2) under the Act, employees have "right" rather than duty to select collective bargaining representative, and they have "complete independence" to organize or not to organize, including right to reject collective representation; and (3) where plaintiffs and their fellow employees disputed incumbent union's representative status and apparently desired not to bargain collectively, Board erred in refusing further to investigate legitimate dispute among employees as to whether union was their representative and thereby denied employees their rights under the Act.

Reversed and remanded.

1. **Labor Relations** ⟹452

National Mediation Board has clear authority to change its own procedures so long as such changes comply with requirements of the Railway Labor Rail Act. Railway Labor Act, §§ 1–208, as amended, 45 U.S.C.A. §§ 151–188.

2. **Labor Relations** ⟹452, 483

Courts are not to substitute their judgment for the judgment of the National Mediation Board or otherwise interfere with Board's legal function, and only the Board can certify or "decertify" a union. 28 U.S.C.A. §§ 2201, 2202; U.S.C.A. Const.Amend. 1; Railway Labor Act, §§ 1–208, as amended, 45 U.S.C.A. §§ 151–188.

3. **Labor Relations** ⟹483

Judicial review of the National Mediation Board is "sparing," but "sparing" is not an absolute. Railway Labor Act, §§ 2, subd. 9, 3, subd. 1, 9, subd. 3, as amended, 45 U.S.C.A. §§ 152, subd. 9, 153, subd. 1, 159, subd. 3.

4. **Labor Relations** ⟹483

Generally, court does not look over National Mediation Board's shoulder in representational disputes, but where Congress has created right, Board cannot destroy that right without intervention by the judiciary. Railway Labor Act, §§ 1–208, as amended, 45 U.S.C.A. §§ 151–188.

5. Labor Relations ⇐452

National Mediation Board breached its clear statutory mandate by not "progressing" worker's application for investigation into representational dispute. Railway Labor Act, §§ 1–208, 2, subd. 9, as amended, 45 U.S.C.A. §§ 151–188, 152, subd. 9.

6. Labor Relations ⇐193

There are no qualifiers attached to Railway Labor Act's simple definition of "representative," nor does Act require collective representation, and "representative" of class of employees is simply person or union designated to act on their behalf, to accomplish what they seek to accomplish, and is not necessarily man for all seasons. Railway Labor Act, §§ 1–208, 2, subd. 9, as amended, 45 U.S.C.A. §§ 151–188, 152, subd. 9.

7. Labor Relations ⇐193

That worker did not "intend to represent" his fellow employees in accustomed fashion did not mean that he did not "intend to represent" them within meaning of Railway Labor Act, nor was he precluded as "representative" because he did not "intend to represent" for all purposes and in fact intended ultimately not to represent employees at all. Railway Labor Act, §§ 1–208, 2, subd. 9, as amended, 45 U.S.C.A. §§ 151–188, 152, subd. 9.

8. Labor Relations ⇐414

Basic purpose of Railway Labor Act is to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes in order to avoid any interruption to commerce or to operation of any carrier growing out of any dispute between carrier and the employees thereof. Railway Labor Act, §§ 1–208, as amended, 45 U.S.C.A. §§ 151–188.

9. Labor Relations ⇐46, 82

Railway Labor Act encourages collective bargaining as mode by which disputes are to be settled and work stoppages avoided, and Congress under the Act gave the unions clearly defined and delineated role to play in effectuating basic congressional policy of stabilizing labor relations in the industry. Railway Labor Act, §§ 1–208, 2, 2, subd. 1, as amended, 45 U.S.C.A. §§ 151–188, 151a, 152, subd. 1.

10. Labor Relations ⇐46

Railway Labor Act was amended in 1934 with primary purpose to strengthen labor organizations vis-a-vis the carriers and because means was required by which will of the employees, uninfluenced by employer, could be ascertained. Railway Labor Act, §§ 1–208, 2, as amended, 45 U.S.C.A. §§ 151–188, 151a.

11. Labor Relations ⇐171, 192

Though Railway Labor Act supports collective bargaining and one of purposes of National Mediation Board is to support collective bargaining, employees have "right" rather than duty to select collective bargaining representative, and they have "complete independence" to organize or not to organize, including right to reject collective representation. Railway Labor Act, §§ 1–208, 2, 2, subds. 3, 4, as amended, 45 U.S.C.A. §§ 151–188, 151a, 152, subds. 3, 4.

12. Labor Relations ⇐207, 416.5

Court of Appeals has power to order National Mediation Board to investigate, to investigate fully and completely and properly, and to certify representative chosen by class of employees, and where employees and their fellow employees disputed incumbent union's representative status and apparently desired not to bargain collectively, Board erred in refusing further to investigate legitimate dispute among employees as to whether union was their representative and thereby denied employees their rights under the Railway Labor Act. Railway Labor Act, §§ 1, subd. 6, 2, 2, subds. 9, 11, 3, subd. 1(m), as amended, 45 U.S.C.A. §§ 151, subd. 6, 151a, 152, subds. 9, 11, 153, subd. 1(m).

Robert F. Gore, Nat'l Right to Work Legal Defense Foundation, Inc., Springfield, Va., John Cosmic, Amarillo, Tex., for plaintiffs-appellants.

Ann Sheadel, Atty., Dept. of Justice, Washington, D.C., for National Mediation Bd.

Joseph Guerrieri, Jr., John J. Sullivan, Washington, D.C., for Broth. of Railway, etc.

Appeal from the United States District Court for the Northern District of Texas.

Before RUBIN and JOLLY, Circuit Judges, and PUTNAM *, District Judge.

E. GRADY JOLLY, Circuit Judge:

This case, one of first impression, involves the question of whether jurisdiction exists under the Railway Labor Act, 45 U.S.C. §§ 151–188, to review refusal by the National Mediation Board to process an employee's application to hold an election among a class of employees after the Board determined that those employees apparently desired to terminate collective representation. We find that while judicial review of Board actions is limited, jurisdiction does exist to compel compliance with the Act. We find further that the Board has here failed to fulfill its statutory duty to investigate a representational dispute so as to allow full and free expression of employee desires with regard to collective representation. Jurisdiction exists, therefore, and we reverse the lower court and remand this case for disposition consistent herewith.

I.

In June 1943 the police officers and special agents below the rank of captain on the Atchison, Topeka and Santa Fe Railroad elected to be represented under the Railway Labor Act by the National Council of Railway Patrolmen's Union, AFL. This selection was certified by the Board in Case R–1091 (1943).

As revealed by the record, the employees in the bargaining unit over the years apparently considered the union a good representative. No attempt was made, prior to the events involved here, either to oust the union or to replace it with another union. No subsequent ratification of the union's representation has ever been made, even when the Railway Patrolmen's Union was replaced as the collective bargaining representative by its successor in interest, the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ["BRAC"].

For whatever reason, however, this era of good feelings between BRAC and the Santa Fe police officers became inclement in 1980. In the wake of similar efforts by other Santa Fe employee groups, some of the officers formed an "Association of Santa Fe Railway Police Officers." On January 4, 1981, the Association mailed a letter to members of the bargaining unit soliciting their support in the attempt to "discertify" BRAC as the collective bargaining representative. According to the letter, the Association "will have its own representation, with collective bargaining rights, to bargain for our own needs, not those of the clerks." A follow-up letter on February 22, 1981, from two of the plaintiffs and a third bargaining unit employee indicated that response to the January 14 letter had been favorable and proposed selection of "a rank and file employee," Larry Russell, as the unit's representative "for purposes of getting us placed in the 'exempt employees' category." The letter indicated that such "exemption" should "result in improved benefits and conditions . . . ." The letter included a detailed list of proposed salary terms and conditions of employment. The last "proposal" stated that "[a]ll agreements, rules, practices, interpretations, and/or understandings, however established, shall be abrogated . . . ." Also included with the letter was an authorization card designating Larry Russell as representative "for all purposes under the Railway Labor Act." According to the plaintiff's brief, BRAC responded to the Febru-

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* District Judge of the Western District of Louisiana, sitting by designation.

ary 22 letter with two letters in opposition to the proposed rejection of BRAC as collective bargaining agent. These letters, however, are not included in the record.

In response to the second letter, 113 cards were returned "authorizing" Larry Russell to serve as "representative" for the employee unit. According to the plaintiffs, the unit comprised 210 employees and, thus, also according to the plaintiffs, a majority of the employees desired to be "exempt," i.e., desired no permanent collective bargaining representative.

Armed with the authorization cards, on March 21, 1981, Russell filed an "Application for Investigation of Representational Dispute" with the Board. The application stated that "a dispute has arisen among the employees of [Santa Fe] as to who are the representatives ... designated and authorized in accordance with the requirements of the Railway Labor Act." Russell requested that the Board "investigate this dispute and certify the name or names of the individuals or organizations authorized to represent the employees involved in accordance with Section 2 Ninth, of the Act."

The Board requested responses to Russell's application from Santa Fe and BRAC. BRAC filed a Statement of Position, opposing the application on the grounds that "(1) Russell's application in effect constitutes a petition for decertification," not authorized by the Act; "(2) Russell lacks any intention to act as the 'representative' of employees, as that term is used in the Railway Labor Act;" and (3) Santa Fe had "assisted and encouraged, if not initiated and orchestrated," Russell's application.

In a significant portion of its statement, BRAC discussed three previous Board cases in which a Santa Fe employee, acting on behalf of his craft or class of employees, had sought to oust the incumbent union, abrogate the collective bargaining agreement, and then have the Board revoke the certification, thereby leaving the employees unrepresented.[1]

The Board received the statements and evidence from BRAC and Santa Fe, as well as a statement from the plaintiffs in response to BRAC's statement. The Board also considered a documented telephone conversation between the chief hearing officer for the Board and Russell's attorney. According to the officer's report, dated April 13, 1981, the attorney indicated that Russell intended "to do what McDaniel did with the Yardmasters ..., namely, win, negotiate an 'exempt' status and walk away from his status as a representative." Among other things, the hearing officer told Russell's attorney that "the Board could dismiss an application any time it found a lack of intent to represent employees."

The other items of information considered by the Board in its investigation were three letters, verbatim copies each of the others, dated April 17, 1981, from Russell to his congressman, Representative Hightower, and to his two senators, Senator Tower and Senator Bentsen. These letters, consistent with the representation made by Russell's attorney to the Board's chief hearing officer, complained that the Board's officer had indicated that Russell could not be elected despite the employees' desire to elect him.

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[1] As indicated in BRAC's Statement of Position, in Case No. R–5039, an individual, J.J. McDaniel, acting on behalf of Santa Fe's yardmasters, had been certified by the Board after a Board election as the bargaining representative on March 31, 1980, to replace the Railroad Yardmasters of America. McDaniel abrogated the collective bargaining agreement with Santa Fe. On July 1, 1980, at McDaniel's request, the Board revoked McDaniel's certification, thereby leaving the employees unrepresented.

In Case No. R–5123, Raul Herrera was elected to represent the yardmasters employed by a Santa Fe subsidiary, Los Angeles Junction Railway Co. Herrera was certified as the representative on September 22, 1980. After abrogating the collective bargaining agreement, Herrera requested revocation of his certification. That request remains pending.

In the Matter of the Application of J.D. Blankenship, 8 NMB No. 18 (Oct. 20, 1980), involved an attempt by Blankenship to be certified as the representative for the class or craft of Santa Fe's dispatchers. The authorization cards distributed by Blankenship provided that he was to undertake "whatever processes are necessary to discertify [sic] my current application with the American Train Disptachers Association and to pursue whatever course of action is necessary to become an exempt employee of the Santa Fe ...." The Board dismissed the application on the grounds that the Act does not provide for "decertification" of a union.

On October 28, 1980, the Board issued a Notice of Hearing to determine whether there was any impropriety "on the part of the employee representatives and the carriers" involved in the McDaniel, Herrera and Blankenship cases. Insofar as the record reveals, that inquiry is pending.

Consideration of these items was the extent of the Board's investigation. On May 21, 1981, the Board issued an order dismissing Russell's application. In pertinent part, that order stated:

> The Board finds that Laurence G. Russell lacks an intent to represent the subject craft or class if elected and certified, as evidenced by his announced and undisputed plan to abrogate all existing collective bargaining agreements, thereby leaving the employees unrepresented *in effect*, notwithstanding the certification and the obligations which attach thereto.

The order declared that, absent intent to represent, certification was not appropriate under the Act:

> The Railway Labor Act, unlike the National Labor Relations Act, contains no statutory provision for decertification of a bargaining representative. [ATSF], 8 NMB No. 18 (1980) [the Blankenship case]. *See also, Manufacturers Railway Company*, 7 NMB Nos. 233 and 250 (1980). The Board will not progress an application for investigation of a representation dispute where the applicant lacks the intent to represent the craft or class, if certified. *Chicago Union Station*, 8 NMB No. 45 (1980), and will dismiss such an application because it is void *ab initio*. *Id.*

II.

Russell *et al.* filed this suit in July 1981 alleging two causes of action. The plaintiffs sought a declaratory judgment under 28 U.S.C. §§ 2201 and 2202 that the Board's actions were unlawful, arbitrary and capricious, an abuse of discretion, in excess of statutory authority and violative of the plaintiffs' first amendment right to freedom of association. Also, a writ of mandamus was sought to compel the Board to hold a representational election.

The second cause of action sought an injunction directed to BRAC and Santa Fe to invalidate the union security agreement, at least until a representational election were held, requiring membership in BRAC as a condition of employment with Santa Fe.

The Board filed a Motion for Summary Judgment urging that the district court lacked jurisdiction to review its action. The district court granted that motion, holding that "[i]t is well established that [the Board's] decisions regarding representational disputes, made pursuant to Section 2, Ninth, of the Railway Labor Act, are not subject to judicial review." The lower court found "two limited exceptions" to this judicial bar: where the Board's action violates a party's constitutional rights and where it acts " 'in excess of its powers or contrary to a statutory mandate.' " (Citations omitted.) The court found that neither exception was present, holding that the Board's investigation was "sufficient and within its scope of authority," and that the investigation met the constitutional due process requirements.

The plaintiffs filed a timely appeal, challenging only the grant of the Board's motion for summary judgment.[2]

III.

The Board's refusal to "progress" Russell's Application for Investigation of Representational Dispute was based on the Board's determination that Russell was seeking a back door method of decertification, for which the Act does not provide. Collective representation is necessary, the

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[2] Subsequent to granting the Board's summary judgment motion, the lower court granted BRAC's unopposed motion for summary judgment and Santa Fe's unopposed motion to dismiss.

Board argues, to assure the avoidance of strikes and transportation stoppages. Such avoidance is the "heart" of the Act. If the employees are not collectively represented, according to the Board, their only resort in the event of a dispute with management is to strike. The Board argues, therefore, that its policy in this case of precluding nonrepresentation of these employees falls squarely within its statutory mandate and is therefore outside our jurisdiction. As to the plaintiffs' constitutional argument, the Board simply argues that the provisions of the Act have been held constitutional, that the Board is acting consistently with those provisions, and therefore no constitutional rights have been violated.

[1] The plaintiffs argue that the Board's policy violates the employees' statutory right to choose whether or not they wish to be collectively represented.[3] They point out that none of the current members of the craft was a member in 1943 when unionization was initially chosen. According to the plaintiffs, the language of the Act, its legislative history and judicial precedent all provide employees a right to have or not to have collective representation. The plaintiffs argue that the Board's refusal to allow them their right to choose whether or not they are to be collectively represented violates the Board's statutory mandate. Also, the plaintiffs argue that the Board's policy violates their first amendment right to freedom to associate or not to associate.

IV.

Three principal issues are presented for our consideration: whether jurisdiction exists for review of the Board's action in a representational dispute; whether the Act requires a representational election even when that election might result in the selection of nonrepresentation; and whether the Board here, by refusing to "progress" Russell's application, violated its statutory mandate.

V.

We must first determine the extent, if any, to which this court may review the Board's actions here.

The starting point in considering the proper scope of this court's jurisdiction is the Railway Labor Act trilogy of *Switchmen's Union v. NMB*, 320 U.S. 297, 64 S.Ct. 95, 88 L.Ed. 61 (1943); *General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Missouri-K.T.R.R.*, 320 U.S. 323, 64 S.Ct. 146, 88 L.Ed. 76 (1943); and *General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Southern Pacific Co.*, 320 U.S. 338, 64 S.Ct. 142, 88 L.Ed. 85 (1943). In *Switchmen's Union* the union opposed the Board's determination as to which yardmen should vote in a representation election. The union brought suit to have the certification of the collective bargaining representative set aside. The district court upheld the Board's decision and was upheld by the court of appeals. The Supreme Court held that the district court did not have jurisdiction to review the Board's action.

Reviewing the legislative history of the Railway Labor Act, the Court held that Congress clearly intended that the Board would be the final arbiter of representational disputes. Noting the background of arbitration and mediation which existed for resolution of railway labor problems, the Court in *Switchmen's* found "highly relevant" the legislative history of section 2, Ninth, of the Act.[4] 320 U.S. at 302, 64 S.Ct. at 98.

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[3] The plaintiffs point out that the Board has, prior to 1980, allowed employees to opt-out of collective representation by the "straw man" procedure sought to be used here. The plaintiffs cite eight Board cases in which this method was successful, including the J.J. McDaniel case, Case R-5039 (1980), discussed *supra* at note 1. The Board argues that it has never authorized "straw man" *un*certification, but rather considered that the persons seeking certification in those cases intended to remain as bona fide bargaining representatives. The plaintiffs point out that the "straw man" procedure is well known among Board pundits, citing GOHMANN, ARBITRATION AND REPRESENTATION: APPLICATIONS IN AIR AND RAIL LABOR RELATIONS 29 (1981) (outlining "awkward" method of decertification by individual employee standing for election).

Regardless of whether true precedent exists, however, the Board has clear authority to change its own procedures, so long as such changes comply with the requirements of the Act. *Brotherhood of Locomotive Firemen and Enginemen v. Kenan*, 87 F.2d 651, 654 (5th Cir.), *cert. denied*, 301 U.S. 687, 57 S.Ct. 790, 81 L.Ed. 1344 (1937).

The Court found that the legislative history of the Act and the specific language of section 2, Ninth, demonstrated convincingly that the Board was to be " 'a neutral tribunal which can make the decision [as to the proper representative of an employee group] and get the matter settled.' " *Id.* at 303, 64 S.Ct. at 98 (quoting Commissioner Joseph B. Eastman, Federal Coordinator of Transportation and principal draftsman of the 1934 amendments to the Act). The Court noted that the provision whereby the Board could appoint a three-person committee to designate which employees should participate in a representation election was included "so that the Board's 'own usefulness of settling disputes that might arise thereafter might not be impaired.' S.Rep. No. 1065, 73d Cong., 2d Sess., p. 3." *Id.*

> Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain.

Id. The Court went on to find that, having no subpoena or enforcement power, the Board's function "under § 2, Ninth, is more the function of a referee." *Id.* at 304, 64 S.Ct. at 98.

> In the present case the authority of the Board in election disputes to interpret the meaning of "craft" as used in the statute is ... clear and ... essential to the performance of its duty. The statutory command that the decision of the Board shall be obeyed is ... explicit. Under this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It was to find the facts and then cease .... [T]he intent seems plain—the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law.

Id. at 305, 64 S.Ct. at 99.[5]

[2, 3] Consistent with *Switchmen's Union*, the courts have universally agreed that

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[4] 45 U.S.C. § 152, Ninth, reads as follows:

> Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

[5] Perhaps the most persuasive evidence of lack of judicial review over section 2, Ninth, determinations by the Board noted in *Switchmen's Union* is the provision for judicial review in section 3, First, of the Act (suits based on awards by the National Railroad Adjustment Board) and in section 9, Third, of the Act (suits based on awards by a board of arbitration). "When Congress in § 3 and in § 9 provided for judicial review ... and in § 2 of the same Act

the details and procedures of representational disputes are committed solely to the Board's discretion. *British Airways Bd. v. NMB*, 685 F.2d 52, 56 (2d Cir.1982); *Brotherhood of Locomotive Firemen & Enginemen v. Seaboard Coast Line R.R.*, 413 F.2d 19 (5th Cir.), cert. *denied*, 396 U.S. 963, 90 S.Ct. 432, 24 L.Ed.2d 426 (1969); *Teamsters v. BRAC*, 402 F.2d 196, 205 (D.C.Cir.), cert. *denied*, 393 U.S. 848, 89 S.Ct. 135, 21 L.Ed.2d 119 (1968). Courts are not to substitute their judgment for the Board's or "otherwise interfere with its legal function," *Aircraft Mechanics Fraternal Assn. v. United Airlines*, 406 F.Supp. 492, 500 (N.D. Cal.1976), and only the Board can certify or "decertify" a union. *Texidor v. Ceresa*, 590 F.2d 357, 359 (1st Cir.1978). So it is that judicial review of the Board has correctly been analyzed as "sparing." *Sedalia-Marshall-Booneville v. NMB*, 574 F.2d 394, 397 (8th Cir.1978). "Sparing," of course, is not an absolute.

To return for a moment to *Switchmen's Union*, we note that despite the Court's certainty that the Board determinations under section 2, Ninth, were not judicially reviewable, the Court did hint at one notable exception to an almost absolute judicial bar when it stated, "*[a]ll constitutional questions aside*, it is for Congress to determine how the rights which it creates shall be enforced." *Id.* 320 U.S. at 301, 64 S.Ct. at 97. As discussed below, this door left ajar has subsequently been pushed open.

Another opening to the preclusion of judicial review of section 2, Ninth, decisions by the Board was provided in *Switchmen's Union*'s companion case, *General Committee of Adjustment of Brotherhood of Locomotive Engineers v. Missouri-K.T.R.R.* Similar to *Switchmen's Union*, the dispute in this case involved which of two unions was appropriate to represent a craft of employees in grievance proceedings. The Court again upheld the determination made by the Board, stating that Congress had "fashioned an administrative remedy and left that group of disputes [between unions or between groups of employees] to the Board. If the present dispute falls within § 2, Ninth, the administrative remedy is exclusive." 320 U.S. at 336, 64 S.Ct. at 152. In the footnote to that last passage, however, the Court stated significantly, "[w]hether judicial power may ever be exerted to require the Mediation Board to exercise the 'duty' imposed upon it under § 2, Ninth, and, if so, the type or types of situations in which it may be invoked present questions not involved here." *Id.* at 336 n. 12, 64 S.Ct. at 152.

These two apertures for a judicial "peek at the merits"[6] have been consistently used in the wake of the *Switchmen's Union* trilogy.[7]

The key case on point in this circuit is *United States v. Feaster*, 410 F.2d 1354 (5th Cir.), cert. *denied*, 396 U.S. 962, 90 S.Ct. 427, 24 L.Ed.2d 426 (1969). At issue in *Feaster* was whether the Board erred in making a unit determination. After a thorough analysis of the Act and *Switchmen's Union*, *Feaster* enumerated the limited instances in which judicial review of section 2, Ninth, disputes are allowed. First, judicial interdiction will be permitted where a complaining party makes a "substantial showing" of a violation of that party's constitutional rights as a result of the Board's action. 410 F.2d at 1366, quoting *Boire v. Miami Herald Publishing Co.*, 343 F.2d 17, 21 (5th Cir.), cert. *denied*, 382 U.S. 824, 86 S.Ct. 56, 15 L.Ed.2d 70 (1965). Second, courts may intervene with Board actions which are " 'in excess of its delegated powers and contrary

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omitted any such provision . . . it drew a plain line of distinction." 320 U.S. at 306, 64 S.Ct. at 99.

[6] *Teamsters v. BRAC*, 402 F.2d at 205.

[7] In Jaffe, *The Right to Judicial Review*, 71 HARV.L.REV. 401, 430 (1958), *Switchmen's Union*'s temerity is ascribed to "the mood of judicial self-deprecation and abdication into which the Court of that period had fallen." The article goes on to state that "*Switchmen's Union* has borne little fruit." *But see* 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE 42 (1958), which characterizes *Switchmen's Union* as "[m]uch the most important case holding that a statute inexplicitly precluded judicial review."

to a specific prohibition in the Act.'" 410 F.2d at 1367, quoting *Leedom v. Kyne*, 358 U.S. 184, 188, 79 S.Ct. 180, 184, 3 L.Ed.2d 210 (1958). *Leedom* involved certification by the National Labor Relations Board of a unit of both professional and nonprofessional employees in contravention of the express provision of 29 U.S.C. § 159(b)(1).[8] In holding that the district court had jurisdiction, the Court in *Leedom* stated:

> This suit is not one to "review," in the sense of that term as used in the Act, a decision of the Board made within its jurisdiction. Rather it is one to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act .... [The Board's action] was an attempted exercise of power that had been specifically withheld. It deprived the professional employees of a "right" assured to them by Congress. Surely, in these circumstances, a Federal District Court has jurisdiction of an original suit to prevent deprivation of a right so given.

358 U.S. at 188–89, 79 S.Ct. at 184.

After analyzing this language, *Leedom*'s analysis of *Switchmen's Union*, and *Leedom*'s progeny, *Feaster* summed up the *Leedom* exception as follows:

> Under this exception access to the courts is accorded only if the Mediation Board's determination is infused with error which is of a *summa* or *magna* quality as contraposed to decisions which are simply *cum* error. Only the egregious error melds the Board's decision into justiciability. Lesser malignancies thwart the jurisdiction of the courts.

410 F.2d at 1368. Using this "narrow and rarely successfully invoked" standard, *id.*, *Feaster* went on to determine that the Board had not so clearly and egregiously violated a specific prohibition of the Act, by determining that the facility involved was a "carrier" within the meaning of the Act, as to vest jurisdiction.[9]

Numerous court decisions have elaborated on judicial interdiction in Railway Labor Act cases. *See BRAC v. Association for Benefit of Non-Contract Employees*, 380 U.S. 650, 661, 85 S.Ct. 1192, 1998, 14 L.Ed.2d 133 (1965) (judicial review allowed where the Board acts in excess of statutory authority or where review necessary to compel performance by the Board of statutorily mandated duties); *British Airways*, 685 F.2d at 56 (judicial review allowed where the Board contravenes statutory policy); *Teamsters v. BRAC*, 402 F.2d at 205 (jurisdiction present where the Board's action is "'so plainly beyond the bounds of the Act, or ... so clearly in defiance of it, as to warrant the immediate intervention of an equity court'," quoting *Local 130, International Union of Electric, Radio & Machine Workers v. McCulloch*, 345 F.2d 90, 95 (D.C. Cir.1965)); *Air Canada v. NMB*, 478 F.Supp. 615, 616 (S.D.N.Y.1980), *aff'd.*, 107 L.R.R.M. 2049 (2d Cir.), *cert. denied*, 454 U.S. 965, 102 S.Ct. 506, 70 L.Ed.2d 381 (1981) (determination by the Board in representation dispute final unless in gross violation of statutory policy); *Railway Employees Co-operative Ass'n. v. Atlanta B & C R.R.*, 22 F.Supp. 510, 514 (D.Ga.1938) (court without jurisdiction to review decision "unless it should become absolutely necessary to protect complainants' rights ....").

[4] As a rule, we are not to look over the Board's shoulder in representational disputes. These matters are, apart from exceptional cases, solely the Board's concern. As discussed in *Switchmen's Union*, Congress intended that the Board have the final word in such matters. But where Congress has created a right, the Board cannot destroy that right without intervention by the judiciary. To hold otherwise

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[8] Despite the fact that *Leedom* involved a dispute under the National Labor Relations Act, *Feaster* characterized it as "the only undisputed exception to *Switchmen's* doctrine that Mediation Board decisions in representation matters are unreviewable." 410 F.2d at 1366 n. 11.

[9] *Feaster* briefly discussed a third exception to *Switchmen's Union*'s bar, that is, where the issue involves a question of "international urgency." 410 F.2d at 1365. Our review of the applicable case law indicates that this exception has received scant attention. It clearly does not weigh on the instant controversy.

would rob the Act of its vitality and thwart its purpose. 320 U.S. at 300, 64 S.Ct. at 97.

VI.

In this case, the plaintiffs argue that the Board has violated its own statutory mandate to allow employees their right to full and free expression of their choice regarding collective representation, including the right to reject collective representation. They argue further that the Board's action violates their constitutional right to freedom of association, including the right not to associate. Because we find that the Board has violated its statutory mandate, we need not address the constitutional issue.[10]

VII.

[5–7] We believe that the Board breached its clear statutory mandate by not "progressing" Russell's application for investigation into the representational dispute. The process for such "progress" is set forth in 29 C.F.R. § 1206.2(a):

> [W]here the employees involved in a representation dispute are represented by an individual or labor organization . . . and are covered by a valid existing contract between such representative and the carrier a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least a majority of the craft or class must be made before the Board will authorize an election or otherwise determine the representation desires of the employees under the provision of section 2, Ninth, of the Railway Labor Act.

The Board refused to move forward with Russell's application for essentially two reasons. First, the Board determined that Russell did not intend to "represent" the unit employees within the meaning of the Act. Second, to allow the sought election, certification of Russell as the elected collective representative, abrogation of the contract and achievement of nonrepresented status for the craft or class would, according to the Board, violate its statutory duty to achieve the basic purpose of the Act. That purpose, the Board argues, is the avoidance of work stoppages resulting from labor/management disputes. And, in order to avoid those stoppages, collective representation is necessary.

In its first argument the Board defines "intent to represent" as the intent to represent in contract negotiations, contract disputes, grievance procedures, and in all other matters where a labor-management go-between might be effective. Because Russell did not "intend to represent" for all of those purposes and in fact intended ultimately not to represent the employees at all, the Board found that he could not have been a representative and, thus, there existed no "representational dispute."

No doubt, the above-listed functions are the usual, ordinary and anticipated functions of a "representative" under the Act. That Russell did not "intend to represent" his fellow employees in the accustomed fashion, however, does not mean that he did not "intend to represent" them within the meaning of the Act. Section 1, Sixth, defines "representative" as "any person or persons, labor union, organization, or corporation designated either by a carrier . . . or by its . . . employees, to act for it or them." There are no qualifiers attached to the Act's simple definition of "representative." The "representative" of a craft of employees is, simply, a person or union designated to act on their behalf, to accomplish what they seek to accomplish, and is not necessarily a man for all seasons. As discussed at length below, the Act nowhere *requires* collective representation. To accept the

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[10] When the validity of an act of the Congress is drawn into question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided. *Crowell v. Benson*, 285 U.S. 22, 62, 52 S.Ct. 285, 296, 76 L.Ed. 598 (1931), quoted in *International Association of Machinists v. Street*, 367 U.S. 740, 749, 81 S.Ct. 1784, 1790, 6 L.Ed.2d 1141 (1961).

Board's definition of "intent to represent" would be to impose such a requirement. A claimed majority of the craft here wanted Russell, apparently, to terminate collective bargaining. Torturous interpretations of "representation" aside, Russell fits the bill.[11]

At oral argument the Board's attorney, in arguing that the Board determined correctly that no representational dispute existed because Russell did not intend to "represent" the craft employees, suggested that the appropriate course of action here would have been for the employees to have petitioned the Board "to hold an election to either vote for the current union representative, BRAC, or, no union." This, of course, is exactly what Russell was requesting, and the Board very well knows it now and knew it at the time Russell applied. In our view, this suggestion is nothing more than playing games with the plaintiffs and with this court.[12] We do not see why the suggested course of action is any more or less objectionable than the action taken by Russell. In fact, the Board's suggested procedure is almost identical to the decertification vote under the National Labor Relations Act, which the Board has stated time and time again is not allowed by the Act.

[8] The second, more substantive argument forwarded by the Board requires more attention. The Board correctly notes that the basic purpose of the Railway Labor Act is

> to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes ... in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. § 152, First. This has been called the "heart" of the Act. *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377–78, 89 S.Ct. 1109, 1114–15, 22 L.Ed.2d 344 (1969). *See also California v. Taylor*, 353 U.S. 553, 565–66, 77 S.Ct. 1037, 1044, 1 L.Ed.2d 1034 (1957) (purpose of Act is to provide for industry-wide government to avoid interruption of national transportation system); *Slocum v. Delaware, L & W R.R.*, 339 U.S. 239, 242–43, 70 S.Ct. 577, 579, 94 L.Ed. 795 (1950) (Act represents a "considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes"); *Pan Am World Airways v. Carpenters and Joiners*, 324 F.2d 217, 220 (9th Cir.1963), *cert. denied*, 376 U.S. 964, 84 S.Ct. 1123, 11 L.Ed.2d 982 (1964) (purpose of Act is to keep transportation moving); *Estes, et al. v. Union Terminal Co.*, 89 F.2d 768, 770 (5th Cir.1937) (purpose of Act is "to facilitate peaceful, orderly adjustment of disputes between railroads and their employees, to prevent strikes and other disturbances.").

[9, 10] It cannot be gainsaid that the Act does in fact encourage collective bargaining as the mode by which disputes are to be settled and work stoppages avoided. *Detroit & Toledo S.L.R.R. v. United Transportation Union*, 396 U.S. 142, 148, 90 S.Ct. 294, 298, 24 L.Ed.2d 325 (1969). Under the Act, Congress gave unions "a clearly defined and delineated role to play in effectuating the basic congressional policy of stabilizing labor relations in the industry." *International Association of Machinists v. Street*, 367 U.S. 740, 760, 81 S.Ct. 1784, 1795, 6 L.Ed.2d 1141 (1961). When the Act was initially passed in 1926, company-dominated unions were the rule, and, in its early years, the Act was not deemed effective. Thus, in 1934, the Act was amended, with a primary purpose being the strengthening of labor organizations vis-a-vis the carriers.[13]

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[11] The Board would say that the employees are "represented" by someone who does not represent their wishes, and are not "represented" by someone who does represent their wishes. Orwell would understand this perfectly.

[12] Equally disturbing is the Board's response, when asked why Russell had not been informed of the "preferred" method of petitioning, that they had never been asked. Mr. Orwell, meet Mr. Kafka.

[13] H.R.Rep. No. 1944 to accompany H.R.Rep. No. 9861, Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. 3 (1934) (1934 amendments "in the interest of industrial peace

As stated in *Aircraft Mechanics Fraternal Ass'n.*, 406 F.Supp. at 497, the Board was created because, under the United States Board of Arbitration "[c]ompany unionism ... continued to present a problem. A means was required by which the will of the employees, uninfluenced by the employer, could be ascertained." This is consistent with the second "general purpose" of the Act found at 45 U.S.C. § 151a, namely, "to forbid any limitation upon freedom of association among employees or any denial of the right of employees to join a labor organization"; it is consistent as well with the third general purpose stated in section 151a, to provide "complete independence ... of employees in the matter of self-organization ...." Similarly, section 2, Third, provides for designation of representatives "without interference, influence, or coercion" and section 2, Fourth, provides that "[e]mployees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter." The Board is therefore correct when it argues that the Act supports collective bargaining and when it argues that one of the Board's purposes is to support collective bargaining.

[11] This in no way, however, takes away from the fact that employees were given the right under the Act not only to opt for collective bargaining, but to reject it as well. The language of the Act, quoted above, clearly stands for this proposition. The employees "shall have the *right*" —not the *duty*—to select a collective bargaining representative. They shall have "complete independence" to organize ... or not organize. And while the "heart" of the Act directs that "every reasonable effort" be made "to make and maintain" collective bargaining agreements, it is only every *reasonable* effort which is required. The Act supports but does not require collective bargaining, and in our view, the implicit message throughout the Act is that the "complete independence" of the employees necessarily includes the right to reject collective representation.[14] Indeed, the concept of "complete independence" is inconsistent with forced representation, most especially when that forced representation is at odds with employees' will and desires.

The legislative history of the Act expressly supports this view. In the official House committee report on the proposed amendments, the analysis of section 2 states that "the employees shall be free to join any labor union of their choice and likewise be free to refrain from joining any union if that be their desire ...." H.R.Rep. No. 1944 to accompany H.R. 9861, Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 2 (1934). In hearings on

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and of uninterrupted transportation service."). The 1934 amendments created the Board out of the old United States Board of Mediation, which, in 1926, at the passage of the Act, had in turn replaced the Railroad Labor Board created by the Transportation Act of 1920. 41 Stat. 456 (1920). The Board was given significantly increased powers, especially in representation disputes. For an overview of the history of the Act, *see Ruby v. American Airlines*, 323 F.2d 248, 256 (2d Cir.1963), *cert. denied*, 376 U.S. 913, 84 S.Ct. 658 (1964); and *Aircraft Mechanics Fraternal Ass'n. v. United Airlines*, 406 F.Supp. 492, 497 (N.D.Cal.1976).

[14] The statement in *Virginian Ry. v. System Federation*, 300 U.S. 515, 548, 57 S.Ct. 592, 599, 81 L.Ed. 789 (1937) (emphasis added) that the aim of the Act is to "secur[e] settlement of labor disputes by *inducing* collective bargaining with the *true* representative of the employees and by preventing such bargaining with any who do not represent them," is consistent with our holding here. The Act *induces*, it does not force, and that inducement applies only to the *true* representative. Likewise, in *Order of Railroad Telegraphers v. Chicago & Northwestern Ry.*, 362 U.S. 330, 337, 80 S.Ct. 761, 765, 4 L.Ed.2d 774 (1960) (emphasis added), the Court stated that "[t]he Railway Labor Act safeguards an *opportunity* for employees to obtain a contract through collective rather than individualistic bargaining." *See also International Association of Machinists v. Northwest Airlines*, 673 F.2d 700, 707 (3rd Cir.1982) (to further goal of ensuring that designation of bargaining representation be free from employer coercion, the Board was "empowered to resolve representational disputes by investigation and certification of the representative that reflected the unfettered choice of the employees.").

H.R. 7650, House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 57 (1934), Commissioner Eastman stated that the legislation "does not require collective bargaining on the part of the employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course, is left open to them, or it should be." Commissioner Eastman also testified before the Senate that "genuine freedom of choice [is] . . . the basis of labor relations under the Railway Labor Act . . . ." Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. 157 (1934). Senator Wagner, later to be the chief architect of the National Labor Relations Act of 1935, stated in hearings on S. 3266 before the Senate, 73d Cong., 2d Sess. 76 (1934), that his understanding of the Act was not that it compelled an employee to join any particular union, but that its purpose "was just the opposite, to see that men have absolute liberty to join or not to join any union or to remain unorganized." And during the relatively brief debate in the House on H.R. 9861, Congressman Crosser, the primary sponsor and floor leader of the bill, stated that "[m]en may organize as they see fit . . . . [The Act] gives employees the absolute freedom to establish unions of employees of a company *if they so desire* . . . ." 78 CONG.REC. 11,713–14 (1934) (emphasis added).

The courts which have examined the issue of employees' rights to reject collective representation are in unanimous agreement that the Act provides such a right. The principal case on point is *BRAC v. Association for Benefit of Non-Contract Employees*, 380 U.S. 650, 85 S.Ct. 1192, 14 L.Ed.2d 133 (1965). In that case, involving two unions competing to represent a craft of employees, the Court considered the narrow question of whether the Board's ballot conflicted with the employees' right to vote against representation by either union. The Court had no trouble in determining that the "legislative history supports the view that the employees are to have the option of rejecting collective representation." 380 U.S. at 669 n. 5, 85 S.Ct. at 1202. Although the Court upheld the ballot form, it had no doubt about the right of employees, although then represented, to opt-out from under representation altogether. In dissent, Justice Stewart objected to the ballot form, which did not contain a "no union" box.[15]

> This ballot form is directly attributable to the Board's view of what the bargaining pattern should be in the airline industry. The Board has stated that "the Act does not contemplate that its purposes shall be achieved, nor is it clear that they can be achieved, without employee representation . . . ." . . . I believe both the language of the Act and its legislative history belie this view and, for that reason, I would order the Board to reconsider the form of its ballot.

380 U.S. at 673, 85 S.Ct. at 1204. Justice Stewart goes on to state that the Act

> furnish[es] the opportunity for majority determination within each employee group of what the nature of bargaining shall be. But the Act is not compulsory. Employees are not required to organize, nor are they required to select labor unions or anyone else as their representatives. It has always been recognized that under the law the employees have the option of rejecting collective representation.

Id. at 674, 85 S.Ct. at 1205. In closing, Justice Stewart noted that the Board had "hewn to its mistaken belief that its duty is to encourage collective representation in the airline industry." *Id.* at 677, 85 S.Ct. at 1206.

In *Teamsters v. BRAC*, 402 F.2d 196 (D.C. Cir.), *cert. denied*, 393 U.S. 848, 89 S.Ct. 135, 21 L.Ed.2d 119 (1968), BRAC was the certified bargaining representative for Pan American clerks and office employees.

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[15] To indicate opposition to representation by any union, an employee has to withhold casting his or her ballot.

BRAC sought to enjoin the Board from holding an election which would have determined whether the employees desired to be represented by BRAC or by the Teamsters. Two invalid elections were held and a third election scheduled, which BRAC opposed, arguing that "the Board has no power whatever to decertify a union; all it may do is certify some new representative." Because BRAC was to appear on the ballot, and because it was possible that fewer than half of the eligible voters might vote, it was possible that there might be a vote in favor of neither union, thereby rejecting collective representation. BRAC sought to enjoin the ballot, arguing, as the Board argues here, that no procedure for decertification was contained in the Act; therefore, BRAC argued, the ballot was by definition improper. The court cited *BRAC v. Association for Benefit of Non-Contract Employees* as support for the employees' right to reject any collective representation.

> It is true ... that that case involved an attempt to unionize employees not then collectively represented, rather than, as here, an attempt by one union to dislodge another. *We agree with counsel for the Board, however, that it is inconceivable that the right to reject collective representation vanishes entirely if the employees of a unit once choose collective representation.* On its face that is a most unlikely rule, especially taking into account the inevitability of substantial turnover of personnel within the unit.
>
> The right of employees to reject collective representation, recognized in *Railway Clerks v. Association [for Benefit of Non-Contract Employees]*, yields as a corollary the Board's implied power to certify to the carrier that in a particular unit the employees have in fact rejected such representation .... The Board has in the past refused to certify a representative, when an election among unorganized employees failed to elicit the votes of 50% of the employees, without any hue and cry that employees must be represented so that the negotiation contemplated by the Act may go on. The Board may not only decline to certify a representative, but may go further and certify that there is no representative.

402 F.2d at 202–03 (emphasis added).

In *Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 65 S.Ct. 1282, 89 L.Ed. 1886 (1945), *modified upon rehearing*, 327 U.S. 661, 66 S.Ct. 721, 90 L.Ed. 928 (1946), the employees asserted a back-pay claim under the collective bargaining agreement. The union grievance committee handled the claim and settled with the employer. The employees were not satisfied with the settlement and pursued the matter. The Railroad Adjustment Board approved the settlement as conclusive on the grounds that the union, as the bargaining agent for the employees, had absolute control over such matters. The employees brought suit in federal court under 45 U.S.C. § 153, First (m), which allows suits from Railway Adjustment Board determinations involving money awards.

The Supreme Court held, *inter alia*, that because the employees had been denied any participation in the settlement and in the action before the Board, their rights under the Act individually to express their grievances had been denied.

> It would be difficult to believe that Congress intended, by the 1934 amendments, to submerge wholly the individual and minority interests, with all power to act concerning them, in the collective interest and agency .... Acceptance of such a view would require the clearest expression of purpose. *For this would mean that Congress had nullified all preexisting rights of workers to act in relation to their employment* ... except as the collective agent might permit. Apart from the question of validity, the conclusion that Congress intended such consequences could be accepted only if it were clear that no other construction would achieve the statutory aims.

325 U.S. at 733–34, 65 S.Ct. at 1295 (emphasis added).[16]

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[16] It should be noted that in reasoning thus, the Court stated that "[i]n this connection" it

Burley has been cited as "teach[ing] that individual rights of employees ... cannot be nullified unless Congress clearly intended such consequences." *McElroy v. Terminal Railroad Ass'n*, 392 F.2d 966, 969 (7th Cir.1968). We do not believe that Congress by the passage of the Act intended to take away existing rights of employees, e.g., the right not to be represented, but rather that it intended to grant additional rights. No intention to deprive employees of existing rights is contained in or can even be inferred from the Act. To the contrary, the obvious intent of the Act, as indicated by the language of the statute itself and the underlying legislative history, is that the goals of collective bargaining and employee freedom of choice are consonant and concurrent. The latter goal clearly is *not* subsumed by the former.[17]

VIII.

Having determined that the plaintiffs and their fellow employees have the clear right under the Act to opt for nonrepresentation, we turn to the key question in this case of whether the Board violated a clear statutory duty in refusing to go forward with Russell's particular application. It is undisputed that once the Board had determined that Russell intended to terminate collective representation in favor of "exempt" status, the Board refused further to investigate his application and the subject representational dispute.

This court has the power to order the Board to investigate, to investigate fully and completely and properly, and to certify the representative chosen by the craft of employees. *Flight Engineers International Ass'n. v. Eastern Airlines, Inc.*, 359 F.2d 303, 308 (2d Cir.1966). As noted earlier, the question of whether judicial review could be exercised to command the Board to "do what Congress commanded, namely, to investigate and certify," had been reserved in *General Comm. v. Missouri-K.T.R.R.*, 320 U.S. at 336 n. 12, 64 S.Ct. at 152.

[12] Eliminating any reservation that existed, the Court in *BRAC v. Association for Benefit of Non-Contract Employees*, stated that in reviewing the Board's actions in a section 2, Ninth, representation dispute, a court's review extends only to determine whether the Board did in fact conduct the investigation. 380 U.S. at 661, 85 S.Ct. at 1198. The Act does not prescribe any set forms for such investigation and leaves that largely to the Board's discretion. *Id.* at 662, 85 S.Ct. at 1198. The Court did note, however, that despite that "broad and sweeping" command, "the Board's duty to investigate is a duty to make such investigation *as the nature of the case requires.*" *Id.* (Emphasis added.)

In *International In-Flight Catering Co. v. NMB*, 555 F.2d 712 (9th Cir.1977), the Board had determined in 1974 that, based on authorization cards indicating a desire that the Teamsters be certified as the bargaining representative, a representational dispute existed. An election was held. The Teamsters lost the election and the Board certified that there was no bargaining representative for IICC's employees. In 1975, after authorization cards *requesting an election* had again been signed, the Board determined that a representational dispute again existed. This time, however, the Board, without holding any election, certi-

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was significant that the Act did not provide for closed shops and that, accordingly, workers in minority unions and unorganized workers were implicated in the issue. The Act was amended in 1951 (64 Stat. 1238) to allow such closed shops, under 45 U.S.C. § 152, Eleventh. So some question exists about whether the result, if reached by the Court today, would be the same. *See Burley*, 327 U.S. at 667, 66 S.Ct. at 724 (Frankfurter, J., dissenting from modified opinion). We do not think, however, that this in any way diminishes the applicability of the quoted language to the decision here.

[17]
> The history of union security in the railway industry is marked *first*, by a strong and long-standing tradition of voluntary unionism on the part of the standard rail unions, *second*, by the declarations in 1934 of a congressional policy of complete freedom of choice of employers to join or not to join a union.

International Association of Machinists v. Street, 367 U.S. at 750, 81 S.Ct. at 1790.

fied the union as the collective bargaining representative.[18] IICC filed suit seeking a declaratory judgment, and the district court enjoined enforcement of the Board's certification.

On appeal, the Board contended that under the Act its actions regarding a representational dispute were not judicially reviewable, relying, as here, on *Switchmen's Union.* The Board stated that it had fulfilled its statutory duty to investigate in that it had compared the signatures on the authorization cards with those on IICC's payroll. The Board argued that the scope and form of its investigation, and its decision based thereon, were within its statutory discretion and as such were beyond the court's jurisdiction. The court disagreed.

> This position advanced by the NMB disregards the import of § 2, Ninth, of the RLA, and *Railway Clerks v. Non-Contract employees.* Both state that the NMB has a duty to investigate *the dispute.* The dispute, in this case, advanced by the IICC was that the cards signed by the employees only called for an election and were not votes for representation without an election. The actual investigation undertaken by the NMB in merely comparing the signatures assumes the disputed point, that the cards represented votes . . . .
>
> . . . .
>
> It is a perversion of the search for truth and the policy of the RLA for the NMB to continue to insist, in these circumstances, that it conducted an investigation and discharged its duty under the RLA.

555 F.2d at 718–19.

Judge Friendly in *Ruby v. American Airlines,* 323 F.2d at 255, stated succinctly that "[t]he Board's duty to investigate is a duty to make such investigation as the nature of the case demands." As indicated previously, the nature of the instant case is that the plaintiffs and their fellow employees dispute the incumbent union's representative status and have an apparent desire not to bargain collectively. When the Board's investigation reached the point of determining the intent of the employees, the Board refused further "to progress" Russell's application, refused further to investigate the legitimate dispute among the employees as to whether the union was their representative, and thereby denied the employees their rights under the Act. When the Board balked, it crossed over from being a disinterested "referee" to being a participant. To repeat, "[u]nder this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It was to find the facts and then cease . . . ." *Switchmen's Union,* 320 U.S. at 305, 64 S.Ct. at 99. The Board failed here to find the fact in dispute: who is the true representative of the employees? It is, therefore, a "perversion of truth" for the Board to insist that it conducted the investigation and discharged its duty under the Act.

IX.

This case is therefore reversed and remanded to the district court. The court shall remand this case to the Board and direct it to proceed with its investigation into the application filed by Russell as it would any other application for investigation of a representational dispute, and not inconsistent with this opinion.

REVERSED and REMANDED.

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[18] Upon IICC's ignoring the Board's certification, the Board authorized the union to commence unilateral action against IICC, including strikes and picketing, thereby running directly counter to what it so persistently espouses as its sole duty under the Act, the prevention of work stoppages.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS
FILED
DEC 20 1983
GILBERT F. GANUCHEAU
CLERK

No. 82-1466

LAURENCE G. RUSSELL, WILLIAM L. HANNA,
and EDDIE D. LANGWELL,

Plaintiffs-Appellants,

versus

NATIONAL MEDIATION BOARD, THE ATCHISON,
TOPEKA AND SANTA FE RAILWAY COMPANY,
et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Texas

ORDER:

On September 22, 1983, a panel of this court ordered the National Mediation Board to hold an investigation and, if necessary, hold an election to determine the representation issues presented by plaintiffs-appellants. Rehearing en banc was denied on November 28, 1983. By means of the present motion, the defendant-appellee, Brotherhood of Railway and Airline Clerks (Brotherhood), asks that the issuance of the mandate be stayed pending its filing of a petition for writ of certiorari to the United States Supreme Court, the stay to continue in force until the final disposition of the case by the Supreme Court. As justification for the stay, the Brotherhood contends that substantial questions of federal law exist which warrant further appellate review. This court specifically and thoroughly considered each of those questions in its panel decision. On rehearing, the Brotherhood did not raise any argument which was not considered in the panel decision; nor did it shed any new light on old arguments. Furthermore, it does not appear that the Brotherhood seeks to raise any argument before the Supreme Court that this court has not thoroughly and exhaustively considered in disposing of this case. It therefore appears that there is little likelihood that the Supreme Court's disposition of this case will be different from that reached by this court.

Balancing the justification for staying the issuance of the mandate against the interests of the plaintiffs-appellants, the reasons for denying the stay are much more compelling. The plaintiffs-appellants have sought a determination regarding the Brotherhood's status as their collective bargaining representative to which they have been entitled, according to our determination, since March 1981. Any further delays should not be suffered by them.

For the above and foregoing reasons, the Brotherhood's motion for stay of the issuance of the mandate is DENIED.

E Grady Jolly
UNITED STATES CIRCUIT JUDGE

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
(established in 1968)
8001 BRADDOCK ROAD • SPRINGFIELD, VIRGINIA 22160 (703) 321-8510

March 6, 1984

HAND DELIVERED

Mr. Rowland K. Quinn
Executor Secretary
National Mediation Board
1425 K Street, N.W.
Washington, DC 20572

Re: ATSF/Russell/BRAC
NMB Case R-5198

Dear Mr. Quinn:

This letter is in response to the Board's letter of February 28, 1984 seeking comments on BRAC's request that the NMB stay further proceedings in this representational dispute pending U.S. Supreme Court action on BRAC's petition for writ of certiorari in *Russell v. National Mediation Board*, 714 F.2d 1332 (5th Cir. 1983).

The simple answer to BRAC's request is NO -- the Board should not and cannot hold the proceedings in abeyance -- absent a valid court order. I'm sure that the Board is aware that BRAC attempted to stay further proceedings by asking the Fifth Circuit not to issue its mandate while BRAC petitioned the Supreme Court. The Court of Appeals DENIED that request stating:

> Balancing the justification for staying the issuance of the mandate against the interests of the [employees], the reasons for denying the stay are much more compelling. The [employees] have sought a determination regarding [BRAC's] status as their collective bargaining representative *to which they have been entitled*, *according to our determination*, *since March 1981*. *Any further delays should not be suffered by them*.

5th Circuit Order dated December 20, 1983, p. 2 (Emphasis supplied). This Court of Appeals Order -- when read in conjunction with its prior opinion that it believed the NMB was "playing games" with the employees and the Court, (714 F.2d at 1342), -- leaves little doubt that the judiciary is rapidly becoming exasperated with the procedural roadblocks precluding employees from exercising their statutory rights.

To date the Santa Fe patrolmen have suffered well over $250,000 in damages (including approximately $190,000 in union dues and service fees paid to BRAC for unwanted union representation) because the NMB has misconstrued the law and refused to allow these employees to have a democratic election to select who should be their representative. The employees do not deny the Board's right to litigate the "decertification" issue, but maintain that once the employees' position has been upheld by the Courts (and the Board has acquiesced in that decision) -- further delays are impermissible.

The investigation should proceed without further delay. If BRAC desires to have the proceedings stayed it can request such action from Associate Justice White at the U.S. Supreme Court. See 28 U.S.C. § 2101(f) and Supreme Court Rule 44. However, until such time as the Supreme Court orders a stay of proceedings, the Board is required to process Russell's application in a timely manner. Further delay only aggravates the employees' damages and casts doubts on the integrity of the National Mediation Board in its ability to carry out its statutory function.

Please complete the investigation and hold the representational election which is now 3 years overdue.

Very truly yours,

Robert F. Gore

Robert F. Gore
Staff Attorney

RFG/nf

cc: Office of the White House
Honorable Alvin Rubin
Honorable E. Grady Jolly
Honorable Richard J. Putnam
Honorable Mary Lou Robinson
Chairman W. C. Wallace
Member R. O. Harris
Member H. M. Witt
Laurence G. Russell
Counsel of Record

Senator NICKLES. Mr. Russell, thank you.

The present status is that you have actually won in the courts. They have remanded it back to the Mediation Board to implement an election, and in your statement, the Mediation Board is stalling, denying you that election. Is that correct?

Mr. RUSSELL. That is correct.

Senator NICKLES. Is an election pending around the corner, or do you see indefinite postponement coming up?

Mr. RUSSELL. I see indefinite postponement. I see no election in the future.

Senator NICKLES. You see no election coming up.

Mr. RUSSELL. I personally do not think there will be an election until the court orders them to hold an election.

Senator NICKLES. Have you contacted the courts, asking them to put some pressure on the Mediation Board to implement their order?

Mr. Gore.

Mr. GORE. Senator Nickles, if I could respond to that, the chart shows there is a case now pending; we are back before the Court of Appeals on another issue. And to get the Mediation Board to start its reinvestigation, the judges on the original panel got a copy of the letter. We are right now trying to get back before that same panel on a different issue. But the facts of what is going on, that panel is quite interested. In the decision they wrote, they were very sensitive to employee rights, and I know that they are going to be very interested in what is taking place. I think that they will see it somewhat as an affront to them. However, because there is no judicial review, it is very awkward for them, because they do not have what we call a "hammer" power, or the authority directly.

Senator NICKLES. The two thrusts of the recommendations you have mentioned regarding the Railway Labor Act are to provide a provision similar to what we have under the Taft-Hartley Act, which is a decertification provision; and the second is a judicial review provision.

Mr. GORE. Yes, Senator; if I could make one other comment that was not in the statement, beginning in March 1981, Larry Russell and the other employees have paid a little over a quarter of a million dollars in dues to their opponents, and they have used that money during the lawsuit and everything to get the rights. Somehow or other, once there is a dispute over who is the representative, the employees ought to be able to contribute their dues to the two parties they want, because if you put it in Republican/Democratic terms, you are being compelled to support the Democrats when you would like to support the Republicans. If the employees, once this dispute breaks up, can distribute their money according to how they see the issues, then you would not be compelled to pay your dues to a party you do not want to represent.

Senator NICKLES. Mr. Russell, why did the majority of the employees in your bargaining unit wish to decertify?

Mr. RUSSELL. Well, we just felt that we could work out a much better arrangement for ourselves with the company without union representation.

Senator NICKLES. In your recommendations, you talk about including an amendment to the Railway Labor Act on decertification.

Despite the Mediation Board's arbitrary actions, doesn't the Railway Labor Act implicitly permit decertification through the procedure which you have outlined?

Mr. RUSSELL. I do not think so.

Mr. GORE. Historically, Senator Nickles, that is the way it was, but in 1980, the Board starting issuing its decision and dismissing it. So now, that implicit right to throw off unwanted representation is no longer there.

Senator NICKLES. But it had been done previously?

Mr. GORE. Yes, sir.

Senator NICKLES. Has there been, under the Railway Labor Act, in any other locals or organizations, the strawman type of avenue of decertification that has been successful?

Mr. GORE. No, sir; right now, Senator Nickles, there are three cases pending, and the National Mediation Board has treated them exactly like the *Russell* case, and have thrown them out. And it looks like more litigation down the same route.

Senator NICKLES. In the past, the Mediation Board did allow these strawman elections for the purpose of decertifying the union, but since 1981, they have not.

Mr. GORE. That is correct, Senator, and it appears that, although they lost in court and did not appeal it, they are continuing to proceed on their own route.

Senator NICKLES. Gentlemen, I appreciate the efforts you are making and your willingness to come before the committee and share your plight. I am not that familiar with your second case, and will not get into that at this time. I appreciate your appearance before the committee today.

Mr. GORE. If we could, Senator, make the statements a part of the record.

Senator NICKLES. We will be happy to include your enclosures.

Mr. GORE. Thank you.

Senator NICKLES. Thank you very much.

Our next and final witness is Roger Schnapp, representing Jet America Airlines, Costa Mesa, CA.

STATEMENT OF ROGER H. SCHNAPP, ESQ., REPRESENTING JET AMERICA AIRLINES, COSTA MESA, CA

Mr. SCHNAPP. Good morning, Senator Nickles.

Senator NICKLES. Welcome.

Mr. SCHNAPP. Let me add my congratulations to the others you have received today, you and your committee, on scheduling these hearings.

For more than a year, the employees of Jet America Airlines have been fighting for the right to select who will represent them in their dealings with the airline, Jet America, concerning wages, benefits, and working conditions. Their fight has involved repeated appeals to the National Mediation Board, and those appeals have been supported by more than 90 percent of the employees involved. It has also involved repeated appeals to the International Association of Machinists and Aerospace Workers, which is the union that the National Mediation Board certified.

The employees have requested that the IAM relinquish, or give up, its exclusive right to represent them and permit them to designate someone of their own choice to represent them.

Finally, their fight has even included attempts to simply attend the negotiating sessions between Jet America and the IAM, and they have been excluded by the National Mediation Board. They have been denied the right to be present at negotiations dealing with their wages, their benefits, and their working conditions by the National Mediation Board, at the request of the Machinists Union, that does not even want the employees to be present during the negotiations.

The Board has responded to the repeated petitions and appeals of the employees by making technical objections to the format of the appeals and by giving the employees the benefit of the Board's interpretation of the Railway Labor Act. We believe that the Board's interpretations of the act have created irrational results—results which are clearly contrary to the intent of Congress in enacting the Railway Labor Act.

The IAM has responded to the employees' repeated appeals by indicating that it will not relinquish its position as the exclusive collective bargaining representative of the employees unless and until it is forced to do so by the National Mediation Board, which has, of course, refused to force it to do so.

The fight of these employees, which formally began on August 2, 1983, when they first petitioned the IAM and the Board, literally continues to this day. Since March 29 of this year, the union has been free to strike Jet America, to picket Jet America at any of the airports that it serves, and to otherwise attempt to induce passengers and suppliers of the airline to cease doing business with Jet America.

Presumably, due to the total absence of support for the union among the employees of Jet America, the IAM has chosen not to engage in any economic action, but the risk of such economic action still hangs over Jet America and its employees.

The only reason that Jet America and its employees are being placed in this position is that the National Mediation Board will not permit new elections—even though, as I said before, more than 90 percent of the employees involved have repeatedly requested them.

Senator NICKLES. May I interrupt you? Did they request that by a petition?

Mr. SCHNAPP. Actually, they did it both ways, Senator Nickles. Initially, they filed a petition with the Board, and the petition was rejected by the Board, because the Board said they thought petitions were inherently unreliable, and they wanted individually signed authorization cards. So the employees went back and got individually signed authorization cards and resubmitted them to the Board, which rejected them again this time because 2 years had not passed since the original election. So it was kind of a Catch-22. The first time, they said the format was wrong, and the second time, they said, "You've got the format right, but we are going to pull a technicality on you." And the statute specifically specifies that an election will not be held within 2 years absent unusual circumstances. And what the employees' attorney alleged was that there were unusual circumstances that warranted it in this case.

Senator NICKLES. If you do not mind my further interruption, when was the initial election?

Mr. SCHNAPP. Well, there were actually three elections. Two occurred in October 1982, and another one occurred in April of 1983. There are three different bargaining units involved.

Senator NICKLES. Thank you. Please proceed.

Mr. SCHNAPP. As a result of the Board's refusal to respond to the employees' petitions, a large international union with vast resources of money and manpower can legally bring all of those resources to bear against a very young air carrier, Jet America, which has very limited resources, even though our employees have overwhelmingly rejected representation by that union.

Now, Jet America and its employees have consistently maintained that the Railway Labor Act as presently drafted permits, and even requires, the National Mediation Board to schedule new elections under the facts that existed in August 1983, when the employees originally asked for them, and under the facts that exist today. Thus, Jet America does not believe that an amendment to the Railway Labor Act should be needed in order to avoid the situation which has occurred. However, since the Board persists in interpreting the existing statute in a manner that denies Jet America's employees the right to freely select who will represent them with respect to their wages, their benefits, and their working conditions, it has become obvious to Jet America that legislative action may be the only way to remedy the situation.

As I have indicated, the employees of Jet America have been fighting for their rights for more than a year. Rather than my characterizing what has occurred, I have attached to my written statement the correspondence between the National Mediation Board and the attorney representing the employees. After reviewing this correspondence between the employees and the Board, we believe that the members of this subcommittee will conclude that the Board is interpreting the Railway Labor Act in a manner which results in a denial of the rights of employees of railroads and airlines to select representatives of their own choosing for the purposes of collective bargaining.

We sincerely hope that this subcommittee will initiate legislative action to correct this grievous wrong.

Thank you, Senator.

[The prepared statement of Mr. Schnapp, with attachments, follows:]

UNITED STATES SENATE
COMMITTEE ON LABOR AND HUMAN RESOURCES
SUBCOMMITTEE ON LABOR

WRITTEN STATEMENT OF
ROGER H. SCHNAPP
ON BEHALF OF
JET AMERICA AIRLINES, INC.
SEPTEMBER 18, 1984

For more than a year, the employees of Jet America Airlines have been fighting for the right to select who will represent them in their dealings with the airline concerning wages, benefits and working conditions. Their fight has involved repeated appeals to the National Mediation Board--supported by in excess of 90% of the employees involved. It has also involved repeated appeals to the International Association of Machinists and Aerospace Workers, the Union certified by the National Mediation Board, requesting that the I.A.M. relinquish its technical right to represent the employees. Finally, their fight has included attempts to attend negotiating sessions between Jet America and the I.A.M.--from which they were excluded by the National Mediation Board, at the request of the I.A.M.

The National Mediation Board has responded to the repeated appeals of the employees with technical arguments concerning the format of the appeals and the Board's interpretation of The

Railway Labor Act. We believe that the Board's interpretations of The Railway Labor Act have created irrational results--results which are clearly contrary to the Congressional intent in enacting The Railway Labor Act.

The International Association of Machinists and Aerospace Workers has responded to the employees' repeated appeals by indicating that it will not relinquish its position as the exclusive collective bargaining representative of the employees unless and until it is forced to do so by the National Mediation Board.

The fight of these employees--which formally began on August 2, 1983--continues to this day. Since March 29, 1984, the International Association of Machinists and Aerospace Workers has been free to strike Jet America, to picket Jet America at any of the airports that it serves (Long Beach, California; Oakland, California; Dallas-Ft. Worth, Texas; St. Louis, Missouri and Chicago, Illinois) and to otherwise attempt to induce passengers and suppliers to cease doing business with Jet America. Presumably due to the total absence of support for the Union among the employees of Jet America, the I.A.M. has chosen not to engage in any economic action, but the risk of such economic action still hangs over Jet America and its employees.

The only reason that Jet America and its employees are being placed in this position is that the National Mediation Board would not permit new elections--even though more than 90% of the employees involved repeatedly requested them. As a result, a large international union, with vast resources of money and manpower, can legally bring these resources to bear against a very young air carrier, with limited resources, even though the carrier's employees have overwhelmingly rejected representation by the union.

Jet America and its employees have consistently maintained that The Railway Labor Act permits the National Mediation Board to schedule new elections under the facts that existed in August 1983 and continue to exist. Thus, Jet America does not believe that an amendment of The Railway Labor Act should be needed in order to avoid the situation which has occurred. However, since the National Mediation Board persists in interpreting the existing statute in a manner that denies Jet America's employees the right to freely select who will represent them with respect to wages, benefits and working conditions, it has become obvious to Jet America that legislative action may be the only way to remedy the situation.

As I have indicated, the employees of Jet America have been fighting for their rights for more than a year. Rather than burden the record with Jet America's characterization of what has occurred, we believe that it would be more helpful for the Committee to review the correspondence between the Board and the attorney representing the employees. Copies of that correspondence have been attached to this written statement.

After reviewing the correspondence between our employees and the Board, we believe that the members of the Subcommittee will conclude that the Board is interpreting The Railway Labor Act in a manner which results in the denial of the rights of employees of railroads and airlines to select representatives of their own choosing for the purposes of collective bargaining. We sincerely hope that this Subcommittee will initiate legislative action to correct this grievous wrong.

DONALD D. HARWOOD
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NEWPORT BEACH, CALIFORNIA 92663-0907

TELEPHONE (714) 644-1313

IN REPLY REFER TO

August 25, 1983

National Mediation Board
Washington, D.C. 20572

Attention: Rowland K. Quinn, Jr.,
Executive Secretary

Re: Employees Maintenance Department of
Jet America Airlines, Inc./
International Association of Machinists &
Aerospace Workers, AFL-CIO/
Case No. R-5331

Dear Mr. Quinn:

Please be advised this office has been retained by Mr. Richard Hunter, a Maintenance Department employee of Jet America Airlines, Inc., relating to the representation by International Association of Machinists & Aerospace Workers, AFL-CIO in connection with Maintenance Department employees of Jet America Airlines, Inc.

Mr. Hunter has provided to us for review a copy of the petition dated August 2, 1983, executed by 37 of the 40 employees of the Maintenance Department of Jet America Airlines, and also a copy of a letter dated August 10, 1983, forwarded to you setting forth the desire of Mr. Hunter and other employees of the Maintenance Department of Jet America Airlines to not be represented by the International Association of Machinists.

I would request your input and response to Mr. Hunter's letter of August 10, 1983, forwarded on behalf of those employees executing the petition dated August 3, 1983, and I would further indicate Mr. Hunter is willing to undertake action as a proposed representative of the employee group challenging the alleged representation by the International Association of Machinists.

I would further note, on behalf of Mr. Hunter, that it is our position that the action of the National Mediation Board in reaching a finding that a dispute existed by and between the mechanics and related employees of Jet America Airlines as determined by the Board based upon notification dated September 1, 1982, and the action of the Board in setting an election on

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August 21, 1982, which purportedly resulted in certification of the International Association of Machinists & Aerospace Workers, AFL-CIO as authorized representatives for mechanics and related employees of Jet America Airlines, is a null and void act in that the National Mediation Board, at the time of such action, did not constitute a "duly constituted Board" and was without power to act pursuant to the authority of the decisions of Air Line Pilots Association and Mark E. Ingram v. Scheduled Skyways, Inc., United States District Court for the Western District of Arkansas, Civil Case No. 82-5147, and related actions, and Railroad Yardmasters of America v. Harris, et al., United States District Court for the District of Columbia, Civil Action No. 82-2741, and, therefore, the purported action of the Board, in determining a dispute, calling election and certifying International Association of Machinists & Aerospace Workers, AFL-CIO as representatives for such employee group, is without force or effect.

We would appreciate a response at your earliest convenience.

Very truly yours,

HARWOOD & ADKINSON

Dennis W. Harwood

DWH/dc

cc: Mr. Richard Hunter
International Association of Machinists &
Aerospace Workers, AFL-CIO
Jet America Airlines, Inc.
Roger H. Schnapp, Esq.

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

10 NMB No. 152
September 2, 1983

Dennis W. Harwood, Esq.
Harwood & Adkinson
550 Newport Center Drive-Suite 800
P. O. Box 1907
Newport Beach, CA 92663-0907

Re: NMB Case No. R-5331
Jet America/IAM&AW

Dear Mr. Harwood:

This will acknowledge receipt of your letter of August 25, 1983, regarding representation of Mechanics and Related Employees of Jet America, Inc., by the International Association of Machinists and Aerospace Workers, AFL-CIO, pursuant to the Board's certification in NMB Case No. R-5331.

With respect to the petition signed by the employees, a photostatic copy of which was filed with the Board, no response was made by the Board because there was no person identified as spokesman or listed with a return address.

Since the petition is addressed to the IAM&AW, any response should come from that organization. However, with respect to any change in representation, you are reminded that Section 1206.4(a) of the Board's Rules, 29 CFR Part 1206, imposes a two-year bar on new applications for investigation of representation disputes following issuance of a certification. Therefore, the Board will not accept a new application prior to October 18, 1984.

With respect to the quorum issue raised in your letter, the certification in Case No. R-5331 was issued with the approval of both Members of the National Mediation Board in office on the date of issuance. Regardless of whether the election was auth-

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orized by a single Member, the Board considers the approval of the certification by two Members as ratification of the decision to conduct an election. Therefore, the Board finds no basis for any further action in this case.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. W. W. Winpisinger
Mr. William Scheri
Roger H. Schnapp, Esq.

RKQ/dca

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IN REPLY REFER TO:

January 16, 1984

National Mediation Board
Washington, DC 20572

Attention: Rowland K. Quinn, Jr.,
Executive Secretary

Re: Mechanics and Related Employees and Store
Employees of Jet America Airlines

Dear Mr. Quinn:

On October 18, 1982, in 10 N.M.B. No. 1, the National Mediation Board certified that the International Association of Machinists and Aerospace Workers had been duly designated and authorized to represent for the purposes of the Railway Labor Act the craft or class of mechanics and related employees of Jet America Airlines. On the same date, in 10 N.M.B. No. 2, the National Mediation Board certified that the International Association of Machnists and Aerospace Workers had been duly designated and authorized to represent for the purposes of the Railway Labor Act the craft or class of stock clerks of Jet America Airlines.

On August 2, 1983, Jet America Airlines applied for mediation of a dispute between the carrier and the International Association of Machinists and Aerospace Workers covering a proposed initial contract for the craft or class of mechanics and related employees and the craft or class of stock clerks.

On August 3, 1983, Mr. Richard Hunter forwarded to the National Mediation Board a petition signed by 37 of the 40 employees in the mechanics and related and stock clerk bargaining unit, in which those employees declared that they no longer desired to be represented by the IAM and indicated that if the IAM did not voluntarily abide by their wishes, that they would request that the National Mediation Board schedule another election to formally oust the union.

On August 3, 1983, Jet America's application for mediation with respect to the mechanics and related employees was docketed as National Mediation Board Case No. A-11309. On the same date, Jet America's application for mediation with respect to the craft or class of stock clerk employees was docketed by the National Mediation Board as National Mediation Board Case No. A-11310.

On August 8, 1983, the National Mediation Board notified the IAM and Jet America that mediator Richard Cosgrave would commence mediation of Case Nos. A-11309 and A-11310 on Tuesday, August 16, 1983. On August 12, 1983, the National Mediation Board notified the IAM and Jet America that mediation in Case Nos. A-11309 and A-11310 had been rescheduled to commence on Wednesday, September 7, 1983, because the IAM representative was unavailable on August 16, 1983.

This office was subsequently retained by Richard Hunter to represent him with respect to the dispute concerning the IAM's continued representation of the mechanics and related employees and the stock clerks. We orally notified Jet America Airlines that we represented more than 90% of the employees in the bargaining unit, and that it was our intention to file formal action with the Board and/or the Courts contending that the Board's October 18, 1982, certifications in 10 N.M.B. No. 1 and 10 N.M.B. No. 2 were invalid.

On August 23, 1983, Jet America Airlines notified the National Mediation Board that it appeared that no purpose would be served by commencing mediation in N.M.B. Case Nos. A-11309 and A-11310 until the question of the validity of the underlying certifications had been resolved.

On August 25, 1983, the undersigned wrote to you indicating that this office had been retained by Richard Hunter to represent him with respect to the continued representation of maintenance department employees of Jet America Airlines. I referenced the petition filed by Mr. Hunter and requested a response to his August 3, 1983, petition. I also noted that it was Mr. Hunter's position that the certifications with respect to the mechanics and related employees and the stock clerks were null and void, since the National Mediation Board took action with respect to the underlying petitions at a time when there was only a single board member. On the same date, the National Mediation Board notified Jet America and the IAM that the commencement of mediation in Case Nos. A-11309 and A-11310 had been postponed to an indefinite date at the request of Jet America.

By letter dated September 2, 1983, in 10 N.M.B. No. 152, the National Mediation Board responded to my letter. The Board indicated that, pursuant to Section 1206.4(a) of the Board's rules, the Board would not accept a new application for investigation of a representation dispute prior to October 18, 1984 (two years following issuance of the certifications).

On September 9, 1983, the National Mediation Board notified Jet America and the IAM that mediation in N.M.B. Case Nos. A-11309 and A-11310 would commence on Tuesday, September 20, 1983. On September 15, 1983, Jet America notified the National Mediation Board that it was refusing to participate in mediation with respect to N.M.B. Case Nos. A-11309 and A-11310 since it had been advised by its counsel that: (1) the initial certifications of the IAM were invalid due to the lack of a board quorum at critical points in the procedure, and (2) that the Board had arbitrarily refused to accept a representation petition from Mr. Hunter, even though unusual circumstances existed that under the Board's own rules would have justified docketing of his petition. On September 16, 1983, the National Mediation Board advised both the IAM and Jet America Airlines that the mediation in Case Nos. A-11309 and A-11310 had been indefinitely postponed.

On October 11, 1983, this office filed a lawsuit in the United States District Court for the Central District of California on behalf of Richard Hunter. That lawsuit sought an order declaring that the National Mediation Board's certifications in 10 N.M.B. No. 1 and 10 N.M.B. No. 2 were null and void. That lawsuit further sought an injunction against the National Mediation Board, Robert Harris, the International Association of Machinists and Aerospace Workers and Jet America Airlines to prevent all of these parties from giving force and effect to the certifications in 10 N.M.B. No. 1 and 10 N.M.B. No. 2. The United States Government has still not filed its answer in that lawsuit and that lawsuit is still pending.

On October 11, 1983, the National Mediation Board notified the IAM and Jet America Airlines that mediation in N.M.B. Case Nos. A-11309 and A-11310 would commence on Tuesday, October 18, 1983. On October 12, 1983, Jet America Airlines notified the National Mediation Board that its position with respect to the commencement of mediation was unchanged; that it continued to believe that the certifications in Case Nos. A-11309 and A-11310 were invalid; and that it further believed that unusual circumstances existed that required the docketing of Mr. Hunter's petition. On October 13, 1983, the National Mediation Board notified the IAM and Jet America Airlines that the commencement of mediation in N.M.B. Case Nos. A-11309 and A-11310 had been indefinitely postponed. By letter dated October 20, 1983, the general counsel of the National Mediation Board notified an attorney representing Jet America Airlines that the National Mediation Board did not

Mr. Rowland K. Qu[illegible]n
Re: Jet America Airlines
January 16, 1984
Page Four

accept "petitions" filed by employees who opposed union representation. As far as Mr. Hunter knows, the National Mediation Board has not attempted to reschedule the commencement of mediation in N.M.B. Case Nos. A-11309 and A-11310 since October 13, 1983.

Enclosed are individual authorization cards from 35 of the 41 mechanics and related employees of Jet America Airlines, Inc., authorizing Richard Hunter to represent them for purposes of collective bargaining. Also enclosed are individual authorization cards from all (total of 4) of the stock clerks of Jet America Airlines, similarly authorizing Richard Hunter to represent them for the purposes of collective bargaining. It would appear that we have met the general counsel's objection to the acceptance of "petitions." While we recognize that, absent unusual circumstances, the Board would not accept an application for investigation of a representation dispute prior to October 18, 1984, we believe that the above facts amply support the petitioner's contention that unusual circumstances exist in this case.

The current situation is the following. There is a lawsuit pending challenging the validity of the certifications issued in October, 1982. The carrier has raised similar questions concerning the validity of these certifications and, as a result, has refused to participate in mediation with respect to the bargaining units covered by these certifications. Since October of 1982, the National Mediation Board has not even attempted to arrange for the commencement of mediation with respect to these bargaining units and there is every reason to believe that any such attempt would be unsuccessful, in light of the carrier's position. As the general counsel of the Board will undoubtedly confirm, a final decision in the pending lawsuit is probably years away (given the likelihood that any party who fails to prevail before the District Court will probably appeal). Until a final decision in Mr. Hunter's lawsuit is issued, it appears unlikely that negotiations will even occur, let alone be productive. In August, 92.5% of the employees in the bargaining unit indicated that they no longer wished to be represented by the IAM. Now 85.3% have done the same thing--on individual authorization cards. We respectfully submit that under any reasonable interpretation of the Board's rules, unusual circumstances exist and the Board should accept Mr. Hunter's application for investigation.

Your prompt attention to this matter would be most appreciated.

Very truly yours,
HARWOOD & ADKINSON

Dennis W. Harwood

DWH/dc
Enclosures
cc: Roger H. Schnapp, Esq.
Mr. Donald C. Rhoads
Mr. William W. Winpisinger

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IN REPLY REFER TO:

January 16, 1984

National Mediation Board
Washington, DC 20572

Attention: Rowland K. Quinn, Jr.,
Executive Secretary

Re: Fleet Service Employees of Jet America Airlines

Dear Mr. Quinn:

On April 28, 1983, in 10 N.M.B. No. 98, the National Mediation Board certified that the International Association of Machinists and Aerospace Workers had been duly designated and authorized to represent for the purposes of the Railway Act the craft or class of fleet service employees of Jet America Airlines.

On June 22, 1983, the National Mediation Board notified Jet America Airlines that the Board had received an application for mediation from the IAM of a dispute involving a proposed initial contract for the craft or class of fleet service employees at Jet America Airlines and that the Board had docketed that application as Case No. A-11285.

On June 30, 1983, the Board notified Jet America Airlines and the IAM that mediation in Case No. A-11285 would commence on July 12, 1983. On July 5, 1983, the National Mediation Board notified Jet America and the IAM that the commencement of mediation had been postponed to July 20, 1983.

On August 5, 1983, Jet America Airlines requested that the National Mediation Board proffer arbitration to the parties in Case No. A-11285.

On August 22, 1983, Jet America renewed its request for a prompt proffer of arbitration in Case No. A-11285.

On August 24, 1983, the National Mediation Board responded to Jet America, indicating that its request for a proffer of arbitration would be brought to the attention of the Board.

On August 28, 1983, Mr. Mike Wentz sent a letter to the National Mediation Board, attaching a petition signed by 18 of the 20 fleet service employees of Jet America Airlines, indicating that they no longer wished to be represented by the IAM and requesting that any further negotiations be permanently terminated.

On September 6, 1983, the National Mediation Board responded to Mike Wentz, advising him that that mediation between Jet America and the IAM was in recess.

On September 9, 1983, the National Mediation Board notified Jet America and the IAM that mediation in Case No. A-11285 would resume on September 20, 1983. On September 15, 1983, Jet America notified the Board that it did not believe that further mediation would be productive in Case No. A-11285.

On September 15, 1983, Mike Wentz retained this office to represent him in an effort to remove the IAM as the certified representative of the fleet service employees.

On September 16, 1983, the Board notified the IAM and Jet America that resumption of mediation in Case No. A-11285 had been indefinitely postponed.

On October 11, 1983, Jet America wrote to the National Mediation Board, renewing its request for a proffer of arbitration.

On October 11, 1983, the National Mediation Board notified the IAM and Jet America that mediation in N.M.B. Case No. A-11285 would resume on October 18, 1983. On October 12, 1983, Jet America notified the National Mediation Board that it continued to believe that further mediation in N.M.B. Case No. A-11285 would not be productive. On October 13, 1983, the National Mediation Board notified the IAM and Jet America that the resumption of mediation in N.M.B. Case No. A-11285 had been indefinitely postponed.

By letter dated October 20, 1983, the general counsel of the National Mediation Board informed Jet America that the Board would not accept a "petition" from employees opposing representation and indicated that the Board found no basis for concluding that the mediation concerning the ramp employees had proven to be unsuccessful.

On November 1, 1983, the National Mediation Board notified the IAM and Jet America that mediation in N.M.B. Case No. A-11285 would resume on November 8, 1983.

It is our understanding that mediator Richard Cosgrave met separately with representatives of Jet America and the IAM on November 8, 1983, and concluded that it would not be productive to bring the parties together.

On January 5, 1984, the National Mediation Board notified the IAM and Jet America that mediation in Case No. A-11285 would resume on January 17, 1984.

Enclosed are individual authorization cards signed by 19 of the 21 fleet service employees of Jet America. These cards authorize Mike Wentz to represent these employees for the purpose of collective bargaining. Since they are individual cards, we assume that they satisfy the Board's objection to "petitions" from employees who oppose representation.

We recognize that, absent unusual circumstances, the Board will not accept an application for investigation of a representation dispute covering these employees prior to April 28, 1985. However, we respectfully submit that the above facts amply support the petitioner's contention that unusual circumstances exist in this case.

The current situation is the following. For the past five months Jet America has maintained that it does not believe that further mediation would be productive. The National Mediation Board scheduled mediation in November and even the assigned mediator concluded that it would not be productive to bring the parties together. We have no reason to believe that the mediation scheduled for January 17, 1984, will be any more productive than the mediation scheduled in November. In August of 1983, 90% of the employees in the bargaining unit signed a petition indicating that they no longer wished to be represented by the IAM. In response to the Board's rejection of that petition, individual authorization cards were again signed by 90% of the employees in the bargaining unit. The employees have clearly and overwhelmingly indicated their desire not to be represented by the IAM and, most recently, to be represented by Mike Wentz. Under the Board's rules, an application from Mike Wentz would be accepted if it were supported by cards signed by more than 50% of the employees in the bargaining unit and were filed after April 28, 1985. The enclosed application is supported by cards signed by 90% of the employees in the bargaining unit--a far larger percentage than would be required after April 28, 1985.

We respectfully submit that under any reasonable interpretation of the Board's rules, unusual circumstances exist and the Board should accept Mr. Wentz' application for investigation.

Mr. Rowland K. Quinn
Re: Jet America Airlines
January 16, 1984
Page Four

Your prompt attention to this matter would be most appreciated.

Very truly yours,

HARWOOD & ADKINSON

Dennis W. Harwood

DWH/dc
Enclosures
cc: Roger H. Schnapp, Esq.
Mr. Donald C. Rhoads
Mr. Willam W. Winpisinger

1934

50TH ANNIVERSARY

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

11 NMB No. 61
February 16, 1984

Dennis W. Harwood, Esq.
Harwood and Adkinson
550 Newport Center Drive
Suite 800
P.O. Box 1907
Newport Beach, CA 92663-0907

Re: NMB Case Nos. R-5331, R-5332
and R-5366, Jet America/IAM&AW

Dear Mr. Harwood:

This will acknowledge your two letters received on January 27, 1984.

In your first letter, you request that the Board waive the time limitations on applications, stated in Section 1206.4(a) of the Board's Rules, 29 C.F.R. Part 1206 and accept the authorization cards submitted with the letter. The letter covers the crafts or classes of Mechanics and Related Employees and Stock Clerks both represented by the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM&AW) pursuant to Board's certifications in NMB Case Nos. R-5331 (October 18, 1982) and R-5332 (October 18, 1982) respectively.

In your second letter, you request that the Board waive the time limitation and accept the authorization cards covering employees in the craft or class of Fleet Service Employees. This craft or class is represented by the IAM&AW pursuant to Board certification in NMB Case No R-5366 (April 28, 1983).

Section 1206.4(a) of the Board's Rules, 29 C.F.R. Part 1206, provides that, except under unusual or extraordinary circumstances, the Board will not accept an application for investigation of a representation dispute among employees for a period of two years from the date of the certification covering the craft or class. The rule is based on the principle that labor stability is enhanced by providing labor and management with a reasonable period of time to establish a collective bargaining relationship.

The Board has carefully reviewed the reasons stated in your letter for a waiver of this rule. In the Board's judgment, the reasons stated do not constitute unusual or extraordinary circumstances as to warrant waiver of the two-year bar. Therefore, the Board will not accept new applications covering the crafts or classes of Mechanics and Related Employees or Stock Clerks prior to October 18, 1984. The Board will not accept an application covering the craft or class of Fleet Service Employees prior to April 28, 1985. Letters and authorizations submitted are hereby returned. Since progressing an application at this time is barred by Section 1206.4(a), it is not necessary for the Board to address any other procedural issues in connection with your subject letters.

By direction of the NATIONAL MEDIATION BOARD.

Rowland K. Quinn, Jr.
Executive Secretary

Copies to:

Mr. W.W. Winpisinger
Mr. William Scheri

RKQ/rwa

Senator **Nickles**. Thank you very much, Mr. Schnapp.

Again, let me go back to the original elections. There were elections held in October 1982, and in 1983?

Mr. **Schnapp**. That is correct, Senator.

Senator **Nickles**. And those were certification elections?

Mr. **Schnapp**. They were.

Senator **Nickles**. And the IAM was certified as the bargaining representative?

Mr. **Schnapp**. Yes, sir.

Senator **Nickles**. What caused the dramatic turnaround in 1984—was that August 1984?

Mr. **Schnapp**. It was August 1983, Senator.

Senator **Nickles**. What caused the dramatic turnaround where, in August 1983, 90 percent said they no longer wanted that representation?

Mr. **Schnapp**. In May of 1983, labor negotiations commenced. There were essentially two employees, one in the mechanic group, and one in the ramp servicemen group, who had initially supported the union and led the union organizing drive—Richard Hunter and Mike Wentz. Those two employees were on the original union negotiating committee and sat in on the negotiations. They were told by the Grand Lodge representative from the IAM that it was irrelevant what they or the employees of Jet America wanted; that the IAM International in Washington had determined what the objectives were in the negotiations, and that the employees' wishes were simply irrelevant and would not be considered. That reached a peak on August 2, literally the day before Hunter wrote his letter to the Board that initiated the employee fight. And it should be noted that it is Hunter and Wentz who are leading the fight to get rid of the union and replace the union with representatives of the employees' own choosing.

Senator **Nickles**. The two individuals that organized the plant?

Mr. **Schnapp**. That is correct. The two individuals who organized the employees and the two individuals who, initially, at least, were on the union negotiating committee, are the two individuals who are leading the fight to get rid of the union.

Senator **Nickles**. I see.

Mr. **Schnapp**. And August 2, was when it reached a peak. Hunter, in the negotiations, appealed to the union in front of the company negotiators, said that he felt the company's positions were well-taken; he did not understand why the machinists union would not accept them, and was simply told to shut up and be quiet. As a result, the next day, literally overnight, he went out and got signatures from about 92.5 percent of his fellow employees and sent a petition to both the union and to the Mediation Board.

Senator **Nickles**. As of today, is there a contract?

Mr. **Schnapp**. No, there is not. And there are no negotiations going on. It was in August, after the employees rejected so overwhelmingly the IAM, that Jet America appealed to the Board to at least bring the negotiations to an end, since they would obviously be futile. It took from August until February for the Board to issue what is called a proffer of arbitration which, after 30 days, means the negotiations will cease.

Senator **Nickles**. Has that happened?

Mr. SCHNAPP. That has now happened with respect to the ramp service employees.

With respect to the mechanics and stock clerks, there is also a case pending in the ninth circuit court of appeals. There is an issue as to whether the original certification was even valid. And Mr. Hunter filed a lawsuit which is now before the ninth circuit court of appeals, and the Board as a result has refrained from scheduling negotiating sessions with respect to those two groups.

Senator NICKLES. The Mediation Board has basically pulled back from their negotiations, and there are no negotiations now?

Mr. SCHNAPP. There are no negotiations going on, but there is a threat of a strike. And in our case, it is less a threat of a strike than it is a threat of secondary activity at the other airports which we serve, where we are dependent upon other airlines, many of whom have IAM employees—for example, Republic, in Chicago, IL—and if those employees were to refuse to handle Jet America aircraft, then it would substantially affect our ability to serve the traveling public.

Senator NICKLES. Are the employees now paying dues, or continuing to pay dues, to the IAM?

Mr. SCHNAPP. They are not, sir. They have never paid dues. In fact, we could have had a contract in August 1983 with the IAM and brought this to a close—regardless of the wages, regardless of the benefits, regardless of the working conditions we wanted—by the simple expedient of giving the IAM a union security clause. They told us that was the only part of the contract that they would not relinquish. They had to have a requirement that all employees pay dues. Beyond that, they were willing to make whatever concessions it took to get a contract. The only thing they cared about was being able to get their dues.

And what we said was we would not force our employees to pay dues against their wishes. We would permit them to if they wanted to, but we would not compell them to against their wishes. And the response we got was, "Why are you looking out for these people? They are the ones that brought the union to begin with. You do not owe them any obligation to look out for them." And, of course, we responded by saying they were our employees, whether or not they had initially brought in the union.

Senator NICKLES. You think the net thrust now should be that the Mediation Board grant your request for a "strawman" election?

Mr. SCHNAPP. Well, I do not even know that it is a "strawman" election. The employees involved, Hunter and Wentz, have never indicated that this would be a "strawman" election. The authorization cards simply requested they be permitted to represent the employees. Unlike the *Russell* case, neither person has indicated that if he were certified, he would abandon it or not seek an agreement, and it is possible that they would.

Senator NICKLES. They would be looking for a bargaining position, but separate from the International Association of Machinists.

Mr. SCHNAPP. That is right. They would like to be able to determine what they want, not have people in Washington tell them what they have to have.

Senator NICKLES. Do you think the Mediation Board has acted in an arbitrary and capricious manner in denying that request?

Mr. SCHNAPP. Very definitely. And I think one of the things it leads to, in terms of a concrete recommendation for the committee is that, while certainly, I would agree with Mr. Russell that it would be nice to have a decertification provision in the Railway Labor Act to make that clear, I think it is even more important that we have an amendment to the act that permits district court review, because the real problem here, as I see it, is not with what the statute says, but with the arbitrary and capricious interpretations of the Board. If we could get to the courts, I think we would be far better off.

Senator NICKLES. Mr. Schnapp, thank you very much for your comments. We appreciate the input and the very good testimony that we have had today from all our panelists.

[Additional material supplied for the record follows:]

WRITTEN TESTIMONY OF

WILLIAM A. HEABERLIN FOR

INTERNATIONAL THEATRICAL AGENCIES ASSOCIATION

HEARINGS BEFORE THE

SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON LABOR AND HUMAN RESOURCES

AND THE

HOUSE SUBCOMMITTEE ON LABOR MANAGEMENT RELATIONS

SEPTEMBER 13, 1984	SENATE HEARINGS
SEPTMEBER 18, 1984	HOUSE OF REPRESENTATIVES

Mr. Chairman, honorable members of the Subcommittee, my name is William A. Heaberlin and I am Immediate Past President of the International Theatrical Agencies Association (ITAA).

The ITAA is an organization comprised of professional booking agents serving the United States and Canada. Our 136 offices represent in excess of 100,000 traveling entertainers who are predominatly performing in hotel lounges and nightclubs on a full-time, professional basis, five to six nights per week. While a few of these performers are members of various unions and guilds, the vast overwhelming majority are represented by the agencies of ITAA alone. They are independent contractors who are full-time entertainers.

Unlike the local musicians in this country who perform mostly single night engagements, treating their musical careers as a sideline, hobby, or avocation, these are enterprising people engaged in musical entertainment as a career and livlihood.

The 136 offices of the ITAA and the 100,000 entertainers we collectively represent are vehemently opposed to the absurd proposals looming in the Senate and House of Representatives designated as S. 281 and H.R. 5107 (1758).

Although misleadingly entitled the "Performing Arts Labor Relations Act", a more accurate nomenclature would be "A Blatent Attempt of the American Federation of Musicians (AFM) to Force Compulsory Unionism on Lounge Performers in Order for Ambitious Union Bosses to Obtain Large Sums of Cash From These Entertainers".

By the AFM's own admission in testimony before the United States Senate, local musicians comprise 86% of that organization. The overriding fact here is that the AFM obviously represents less than 12% of the 100,000 lounge performers booked by ITAA affiliate offices. Although this group of hard working American citizens is the group that would be most affected by the proposed legislation, it is significant to note that these people are not affiliated with the AFM. It is obvious that the AFM would benefit immensely by having all of these 100,000 performers paying union dues and exorbitant "work taxes" to the union hierarchy. This would be easily accomplished with the passage of these bills which seek to do through sinister, well-disguised legislation what could not be done at all through voluntary compliance based upon services rendered. Although many of these performers belonged to the AFM during the days when they exerted monopolistic controls based upon intimidation, coercion, and threats, they have fled the AFM in droves and have enjoyed the proper perspectives underlined time and time again by the NLRB and numerous judicial decisions.

The bills in question would permit Secondary Boycotts. Hence, the AFM could go to any hotel, club, or lounge and request, encourage, coerce, or perhaps even force all union bartenders, waiters, or delivery personnel to limit services or even strike if the house did not employ all "union bands". In this case, the band would be forced to pay into the union to order to work the engagement. Since this would be in direct conflict with the will of those involved, the result would underscore the real intent of these bills -- compulsory unionism. Another option for the house would be to dispense with live entertainment altogether and utilize sound systems, sophisticated video-jukeboxes, and state-of-the-art disco equipment like many of their competitors -- thus avoiding a sensitive labor problem. Naturally, the AFM players working in recording studios would receive royalties. Hence a union that ostensibly works for the good of musicians would serve as the principal catalyst to put 100,000 co-workers out of work.

Over the years, this situation has not been a threat to the entertainers who provide quality productions in the lounges of this great country because they have been well-served by the Taft Hartley Act and the National Labor Relations Act. To seek to make all of these performers "employees" for labor law purposes ignores the basic structures of this specialized industry. To lump these accomplished professionals with

with part-timers, weekend players, and any amateur who can afford union dues is a grave injustice.

For the record, Gentlemen, the AFM represents "musicians who read printed notes on a sheet of music and transcribe the sound to an auditory pleasantry", usually. The ITAA represents a far greater number of "entertainers". While these people all play instruments and provide their own musical accompaniment, they do not go on stage with their noses in sheet music. Rather, they memorize their numbers so that they can sing, dance, deliver comedy lines, establish audience rapport, eye contact, pantomime, etc. In other words, they need to be free to practice their real craft -- entertaining.

The overt and covert movements, choreography, facial expressions and other tools of the trade serve the public well. If you just want to hear music, you can play the radio; if you want to be entertained, hire a lounge act. It is amazing how adept these performers become when they dedicate themselves to becoming polished, professional attractions. They can't do this and hold down day jobs at the same time. They must be free to pursue their careers wholeheartedly without being harrassed by those who would seek to control them and tax them for that nebulous privilege.

As an example of the "musician/entertainer" differentiation, please consider the example of Wayne Newton. Not even Wayne's mother ever accused him of being a great musician, but he is undisputably a collossal entertainer, using a real assortment of instruments with varying degrees of expertise in his shows. On the other hand, many of today's finest concert pianists do credible jobs of playing Chopin, Mozart, and even Liszt but cannot sit down at the piano and play Melancholy Baby in the Key of C. This does not mean the musician is not a musical genius who excels at his art. It simply means that he is out of his realm. The differences are real and significant.

Moreover, the very idea of jeopardizing the liveliehood of 100,000 plus entertainers for the alleged benefit of those who "moonlight" by dabbling in music is preposterous to say the least.

Passage of these bills would be a classic case of throwing out the proverbial baby with the bathwater. The result is totally unjustifiable. It is the considered opinion of the members of ITAA and the 100,000 entertainers who perform in the lounges of America that the laws of the land serve us well and do not need to be changed for self-serving reasons.

To quote Lyndon Johnson's admonition, "If it ain't broke, don't fix it." There is nothing wrong with Section 8 (e) of the Taft-Hartley Act. We are not so sure about the AFM.

In conclusion, we appeal to you, our duly elected public representatives, to realize this legislation for what it really is and squelch this sinister attempt by the "inmates to take over the asylum".

Thank you, Mr. Chairman and distinguished members of the committee for the opportunity to present the views of those who would be victimized by S. 281 and H.R. 5107 (1758). May God grant you wisdom and courage in making this important decision which will mean so much to so many.

Good day.

STATEMENT OF

BOARD OF DIRECTORS OF THE
INTERNATIONAL THEATRICAL AGENCIES ASSOCIATION

HEARINGS BEFORE THE

SUBCOMMITTEE ON LABOR-MANAGEMENT RELATIONS
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1984

The International Theatrical Agencies Association (ITAA) is comprised of some 136 booking agencies across the United States and Canada who are the principal purveyors of entertainment to this country's hotel lounges and night clubs. Collectively, the ITAA agencies proudly represent over 100,000 professional entertainers who perform on a full-time basis year round.

Today, the livelihoods of those 100,000 performers, the livelihoods of the employees of the 136 booking agencies, and indeed the lounge entertainment industry itself are being assulted by two absurd proposals before the Congress of the United States -- mainly S. 281 in the Senate and H.R. 5107 in the House of Representatives.

Proponents of these bills have chosen to ignore several critical aspects of this legislation. These include the fact that these bills are prodominately aimed at lounge performers, that lounge entertainment is decidedly a unique profession, and that the overwhelming majority of professional musicians in the United States oppose this legislation.

First, the bills attempt to lump these professional entertainers who play music for a living with the group of part-timers, hobbists, and local bands which comprise 86% of the membership of the American Federation of Musicians at whose request these bills were proposed. Unlike the part-timers, the professional lounge entertainers do not in the overwhelming majority of cases belong to the AFM. Accordingly, they do not pay a percentage of their income to the union through a dubious tax called "work dues" which are paid for the "privilege" of working within the

President
C W KENDALL
Dallas, Texas

J MICHAEL DUNHAM

JOHN SANSONE

ELAINE FALK

MONTE TAYLOR

JERRY ROSS
Royal Oak, Michigan

DICK CALDWELL
Calgary, Alberta

DAVID JACKSON
Shawnee Mission, Kansas

MIKE KAPSON

JERRY GLASGOW
Philadelphia, Pennsylvania

BOB HOECKSTRA

BRIAN KNAFF

M T ALEXANDER
Corpus Christi, Texas

TERRY QUICK
Seattle, Washington

CHARLES JOHNSON

ROSS WHITE

PAUL MASCIOLI

Immediate Past President
BILL HEABERLIN
Huntington, West Virginia

BOB VINCENT
Studio City, California

INTERNATIONAL THEATRICAL AGENCIES ASSOCIATION jurisdiction of an AFM local. The AFM would no doubt have much to gain by forcing the lounge entertainers to join their union and pay a percentage of their substantial salaries into the union's treasury. It is the opinion of this organization and the entertainers we represent that this is in fact the real reason for the inactment of these proposals.

Secondly, the bills fail to show that the lounge performers are a distinct group of workers sharing significantly individualized circumstances. That uniqueness sets them off from other workers with decidedly different employment parameters, i.e. garment workers and construction workers. Garment workers do not band together into small groups, invest mutually in sophisticated electronic equipment, instruments, lighting systems, travel vans, trailers, and outfits and devote hours of co-op time to rehearse and render a musical production to be sold for time limited engagements. The up front money is provided by the individual bandleader or through a joint venture of the band members. Hence, unlike the part-time musicians who may play in a symphony orchestra, for example, and simply show up on the job carrying a single instrument with music stands and chairs provided for them, the lounge entertainers must make a substantial investment on a co-op basis to become a productive entity. This is indeed a specialized vocation and needs to be recognized as such. It is certainly falacious to group the working professionals with the weekend musicians who do not invest thousands of dollars to work independently.

Third, in sheer numbers alone, the more than 100,000 entertainers represented by the ITAA overwhelmingly outnumber the small fraction of professional entertainers who wish to impose their preferences on an industry overwhelmingly opposed to that point of view. Testimony submitted by the American Restuarant Association, the Hotel/Motel Association, and others will enhance this point.

A final insight into how the lounge entertainment industry works shows that the entertainers are clearly not employees. Article 10 of the industry-wide, standardized ITAA contract form reads as follows:

jurisdiction of an AFM local. The AFM would no doubt have much to gain by forcing the lounge entertainers to join their union and pay a percentage of their substantial salaries into the union's treasury. It is the opinion of this organization and the entertainers we represent that this is in fact the real reason for the inactment of these proposals.

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STATEMENT
OF
JACK GOLODNER, DIRECTOR
DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO
FOR THE
SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
REGARDING
THE PERFORMING ARTS LABOR RELATIONS AMENDMENTS
S. 281

I am Jack Golodner, Director of the Department for Professional Employees (DPE), AFL-CIO. I wish to convey to the Subcommittee the support of the AFL-CIO and the Department for S. 281 -- The Performing Arts Labor Relations Amendments.

The AFL-CIO, of course, needs no introduction to the Subcommittee. But it may be useful for me to point out that the Department brings together 26 national and international unions (list attached) which represent in their membership 3 million professional, technical and highly trained white collar workers. These people are teachers, librarians, nurses, performing artists, engineers and scientists. Indeed, every major profession and every major technical occupation in the United States is represented in the ranks of our affiliated organizations.

We are told that in this highly technical, highly complex, very competitive world, these very creative, highly trained and educated people hold the key to the future well-being of our nation. Yet, though some are adequately rewarded by our society for their dedication, their years of training and their contributions -- most are not. Though some are able to fully participate in the decisions that affect their professions, and their careers, many cannot. Though these Americans have for many decades built respectable organizations that have contributed mightily to the vitality of our country, and their professions they now find these associations under attack and their rights to participate through them being denied.

We ask that you note the pleas of those who pursue careers in the performing arts and their representatives. They are being denied access to the collective bargaining process simply because the way in which they must work and the way in which their employment relationships are structured were not considered in laws which, orginally, were not contemplated as applying to them. Those laws, because of court and NLRB decisions, now have been made to apply to them and, like clothing cut for someone else, they just do not fit. The result is confusion, mischief making, and the frustration of the legitimate rights of people who deserve better treatment from a democratic government.

In 1959 Congress recognized the special situation of employers and employees in the construction trades with regard to short-term and casual employment and made provisions for them in the NLRA. I cannot believe that the Congress wants our laws to discriminate against the employers and employees of the arts and entertainment industry who face an identical situation. Only those who wish to roll back the clock and repeal the nation's commitment to free collective bargaining could fight to retain such a basic inconsistency.

Congress also acknowledged that special situations in the garment industry made it impossible for workers to achieve representation or engage in collective bargaining unless special consideration was given the nature of the industry. Such consideration was given. But many years after the NLRB asserted jurisdiction in the arts and entertainment field where similar unique situations prevail, Congress has not acknowledged them. Why the dissimilar treatment? Why do our laws refuse to consider the special needs of our nation's artists and the bulk of their employers who adhere to the principle of furthering collective bargaining as expounded in the NLRA? I think the situation speaks more to the failings of the Congress than any shortcomings in the proposed legislation.

Since 1966 bills containing provisions similar to S. 281 have been introduced in each Congress. Hearings were conducted twice by the House Education and Labor

Committee -- in 1966 and 1977. In the first hearing, the only opposition arose from those who pressed for "perfecting" amendments which were, indeed, incorporated in all subsequent versions of the legislation. At that time, and in 1977 the National Association of Legitimate Theatres (League of New York Theatres) representing the major employers of live talent in the legitimate theatre endorsed the amendments to section 8(f) as proposed. In 1977, no witnesses appeared in opposition to this change or to the changes in section 8(e) being suggested in the bill now before you.

Responsible employers in the live entertainment field know that the structure of their industry and the short term nature of projects within it cannot tolerate the uncertainties created by Board and court decisions applying the current statute.

They know the value of the stability which is obtained through pre-hire agreements and a union shop provision that conforms with the reality of their industry. Both are now enjoyed by the construction industry. Why are they denied to the arts and entertainment industry?

Reasonable, fair-minded employers in the arts and entertainment area do not duck their obligations to bargain and treat with their employees fairly. They know that the special nature of their industry, like that of the garment industry, requires special consideration in the law if collective bargaining is to work.

Frankly, I think the time is overdue for this committee and the Congress to make sure that this nation's laudible commitment to protecting the right to free collective bargaining as expressed in the NLRA is at least as meaningful for actors, musicians, and other live performers as it is for other workers.

Certainly, improvement is needed throughout the NLRA, in the procedures of the NLRB and vis-a-vis all workers if the purposes of the original Act are to be fulfilled. At the very least -- I suggest an end to the dissimilar treatment of similarly situated workers under the law — a result which could be achieved by passage of the Performing Arts Labor Relations Amendments (S. 281).

AFFILIATES OF THE DEPARTMENT FOR PROFESSIONAL EMPLOYEES, AFL-CIO

Actors' Equity Association

American Federation of Government Employees

American Federation of Musicians

American Federation of State, County and Municipal Employees

American Federation of Teachers

American Federation of Television and Radio Artists

American Guild of Musical Artists

Association of Theatrical Press Agents and Managers

Brotherhood of Railway and Airline Clerks

Communications Workers of America

Federation of Professional Athletes

International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators

International Association of Machinists

International Brotherhood of Electrical Workers

International Federation of Professional and Technical Engineers

International Union of Electronic, Electrical, Technical, Salaried and Machine Workers

International Union of Operating Engineers

International Union, United Automobile, Aerospace & Implement Workers of America

National Association of Broadcast Employees and Technicians

Office and Professional Employees International Union

Retail, Wholesale and Department Store Union

Screen Actors Guild

Seafarers International Union

Service Employees International Union

United Association of Journeymen Plumbers

United Food and Commercial Workers

Statement
of
John S. Irving
Kirkland & Ellis

Subject: "Has Labor Law Failed?"

Joint Hearings
before
The Subcommittee on Labor-Management Relations
and
The Subcommittee on Manpower and Housing
of the
U.S. House of Representatives

June 26, 1984

STATEMENT OF JOHN S. IRVING
HOUSE SUBCOMMITTEES ON LABOR-MANAGEMENT RELATIONS AND MANPOWER AND HOUSING
June 26, 1984

My name is John S. Irving. I represent management clients and am a partner in the law firm of Kirkland & Ellis in Washington, D.C. I am pleased to have this opportunity to express my views on whether the Country's labor laws are working as they should and, in particular, on the subject of NLRB decisions. Over the years I have taken a keen interest in the Board, both from outside and inside the Agency. In 1965, I began my career in labor law at the NLRB and was employed at the Board for thirteen of the fifteen years I spent in the Federal service, until 1979 when I entered private law practice.

During my years at the Board, which I began as a law clerk, I was a legal assistant, an appellate attorney, and supervised the Agency's regional offices and the General Counsel's Advice Section. From 1972 until 1975 I served as Deputy General Counsel and from 1975 to 1979, as General Counsel. While I was at the Agency and since, I have read virtually every new Board decision.

In short, I have been an interested observer of the Board and its decisions, and particularly interested in the changes in Board law over the years, changes which have resulted from a variety of causes. Some were in response to court decisions. Most, however, resulted from changes in the composition of the Board and the differing philosophies and approaches of the majorities which determined the course of Board decisions.

Anyone who knows anything about the National Labor Relations Act knows that it is sheer nonsense to say that there is any one "correct" way that the Act must be read. The NLRA is the most complex Federal labor law, is truly the product of legislative compromise, and contains many vague and even conflicting provisions.

Because of these inherent inconsistencies and ambiguities, a better test of whether the Act is being "properly" interpreted by the Board is whether Board decisions are balanced and make practical labor relations sense. This is a quite different test from measuring Board decisions by whether they happen to "please" labor or management. Thus, in my view, Board interpretations of the Act are most susceptible to criticism when they lead to results which, as a practical matter, Congress never could have intended.

For at least five years, prior to 1983, Board decisions, or I should say majority decisions, were most susceptible to valid criticism. From approximately 1977 until recently, and particularly under the chairmanship of former Chairman John H. Fanning, a Board majority forged new rules and reversed, refined, and extended then-existing precedents to extremes which simply could not have been intended by

Congress. In a great number of instances, which I will discuss, the decisions of Board majorities during this 1977 to 1983 period, made little practical sense and even less sense as national labor policy.

In answer to the question, "Have the labor laws failed?", I would have to respond, emphatically, no. The changes in Board law which we have witnessed in recent months have restored needed balance and evenhandedness to the law. These corrections are long overdue and are proof that the NLRA has not failed. Instead, they are proof that the labor laws are working. The viability of this self-correction process should be a source of enthusiasm for the Act, not dire and misleading claims that the Act has "failed."

The critics of recent Board decisions - organized labor and its willing allies in the media and in Congress - base their claims on two faulty premises. First, they assume that recent changes in Board law are departures from sound, "correct" legal principles. They are not. Second, those critics would have us believe that the precedents being modified are "long established." They are not. Indeed, most of those "precedents" are of recent vintage. Moreover, the changes, in reality, are little more than a return to balance and a renunciation of short lived policies which may have worked to the advantage of organized labor, but which made little sense for national labor policy.

Others here today will focus in depth on the details of recent Board decisions about which labor complains. In order to minimize duplication, I have chosen to focus on the law as it stood prior to 1982 -- on many of the so-called "sound" and "established" precedents which new Board members since 1981 faced when they took office.

Between 1977 and 1983, management was distressed by many decisions from Board majorities comprised almost consistently of former Chairman Fanning and Member Jenkins and, variously, of former Chairman Murphy, Member Truesdale, and/or Member Zimmerman. While a number of critical articles were written by some, myself included,1/ management refrained from demanding congressional hearings to challenge Board holdings and stopped short of demanding the resignations of Board members with whom they strongly disagreed. In short, management critics in those years were much more civilized than labor critics who currently are demanding the hides of certain Board members. Management thought it could encourage changes in course at the Board through constructive criticism

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1/ Irving, The NLRB as Change Approaches, Labor Law Developments 1984, Southwestern Legal Foundation; Irving, Recent NLRB Developments: The Survival of the Misguided Majority, Labor Law Developments 1983 at 77, Southwestern Legal Foundation; Irving, NLRB: Master of its Own Destiny (Fate?), Labor Law Developments 1982 at 67, Southwestern Legal Foundation; Irving, Plant Relocations and Transfers of Work: The NLRB's "Inherently Destructive" Approach, 34 Lab. L. J. 549 (1983); Irving, Closings and Sales of Businesses: A Settled Area?, 33 Lab. L. J. 218 (1982).

instead of misleading claims and feigned alarm which union critics have substituted lately for reasoned analysis.

Let us examine some examples of the "sound" and "established" precedents inherited by new Board members since 1981. The majority, almost consistently led by former chairman Fanning and member Jenkins, believed, for instance, that labor contracts do not really mean what they say. Although a contract contained an expiration date, the Fanning Board reversed established precedent in 1979 and held that contractual grievance procedures survive contractual expiration dates, even for grievances which arose after expiration.[2/] Such a rule, I suppose, would require contracting parties to negotiate expiration clauses which say, "When this contract expires, we really mean it."

Neither were contractual no-strike clauses construed to mean what they say. No matter how broad a no-strike clause, the Board required parties to specifically list certain kinds of strikes, e.g., sympathy strikes[3/] or strikes over the actions of third parties.[4/] If they failed to do so, the Board held that such strikes were not forbidden, even in the face of a broadly worded no-strike clause.

[2/] American Sink Top & Cabinet Co., 242 N.L.R.B. 408 (1979).

[3/] United States Steel Corp., 264 N.L.R.B. 76 (1982), enforcement denied, 711 F.2d 772 (7th Cir. 1983).

[4/] Pacemaker Yacht Co., 253 N.L.R.B. 828 (1980); enforcement denied, 663 F.2d 455 (3rd Cir. 1981).

If management obtains one thing in return for the concessions it makes in a labor contract, it is labor peace for the term of the agreement. Yet, despite this obvious fact of industrial life, the Board ignored the realities of bargain struck by the parties and watered down broad contractual strike prohibitions which were both clear and unambiguous.

Similarly, in 1977 members Fanning and Jenkins and in this instance member Murphy reversed established precedent and undermined contractually agreed-upon arbitration procedures.[5] Grievants in discharge cases were given the choice of arbitrating or resorting to the Board, or both. No matter that the dispute was essentially a "just cause" discharge dispute. No matter that the contracting parties had agreed to utilize the contractual grievance procedures as the sole means of resolving disputes during the term of the agreement. No matter that the dispute was, indeed, susceptible to resolution by an arbitrator. No matter that the Act specifically states in Section 203(b) that private dispute resolution is the "desirable method" of resolving contractual disputes. And, no matter that the Board was simultaneously complaining to Congress and the President about its "ever increasing caseload."

5/ General American Transportation Corp., 228 N.L.R.B. 808 (1977).

No, to this Board majority, NLRB dispute resolution was the desired course. Majorities led by members Fanning and Jenkins did everything they could to undermine established law favoring deferral to arbitration awards. Arbitrators were second-guessed, at least when the Board majority did not like the arbitral result.[6] Various devices for second-guessing arbitrators were employed. Sometimes the Board simply would conclude that arbitral results were "repugnant to the Act," in some instances because the arbitrator's remedy was not congruent with a remedy the Board might grant.[7] Often it was not enough that an arbitrator concluded on parallel facts that a discharge was, in fact, "for cause."[8] It was not enough that the arbitrator actually considered the unfair labor practice issue, if the issue had not been raised by the grievant himself.[9] And, of course, negotiated grievance settlements short of arbitration were entitled to no deference at all.[10]

Such decisions, presumably supported by current Board critics, did little to encourage collective bargaining or to promote the sanctity of labor agreements. Instead, they seemed to concentrate on giving grievants and unions as many bites at dispute resolution mechanisms as possible, private and public. The consequence was to contribute unnecessarily to the Board's already inflated caseload -- at taxpayer expense.

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[6] Babcock & Wilcox Co., 249 N.L.R.B. 739 (1980).

[7] Hammermill Paper Co., 262 N.L.R.B. 1236 (1980).

[8] Albertson's, Inc., 252 N.L.R.B. 529 (1980), enforcement denied 108 L.R.R.M. 2714 (9th Cir. 1981).

[9] Professional Porter & Window Cleaning Co. 263 N.L.R.B. 136 (1982).

[10] Thatcher Glass Mfg. Co., 265 N.L.R.B. 321 (1982).

But this is by no means a complete list of cases in which earlier Board majorities contributed to labor management instability by undermining collective bargaining agreements. With respect to plant relocations during the term of a labor agreement, the Board was willing to read provisions into contracts which were not there. Where contracts contained no prohibitions against mid-term relocations for economic, labor-cost savings reasons, the Board invented them. It provided unions with a veto against such moves, a veto for which unions need not bargain at the bargaining table. In one case, Brown Company, the Board actually held that the contract was irrelevant in such cases, a view rejected by the Ninth Circuit.[11]

It is this ill-conceived theory, a theory which makes nonsense out of the bargain struck by the parties, that the current Board rejected in Milwaukee Spring.[12] The outrage feigned by representatives of organized labor in the wake of that decision had less to do with the reversal of sound established precedent, and more to do with labor's loss of its Board-devised "veto," an advantage to which it was never rightly entitled and which was contructed by the Board out of whole cloth.

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[11] Brown Co., 243 N.L.R.B. 769 (1979), enforcement denied in relevant part, ___ F.2d ___, 109 L.R.R.M. 2663 (9th Cir. 1981).

[12] Milwaukee Spring Division of Illinois Coil Spring Co., 268 N.L.R.B. No. 87 (1984).

In other important respects too, inherited precedents made little sense. So eager were majorities led by members Fanning and Jenkins to insulate union strikers from employer discipline that threats against non-strikers were ignored unless those threats were accompanied by "overt acts." Thus, it was unlawful for employers to discipline strikers who merely threatened to burn the homes of non-strikers.[13] Neither could strikers be terminated for threatening to "take care of" a non-striker--at his home, at night, and in front of his pregnant wife and small child.[14] This threat was unaccompanied by overt acts the Board said, noting that a screen door separated the non-strikers from the striker and his family. Other strikers were ordered reinstated when they jumped on the hoods of moving vehicles,[15] and still others were reinstated when they announced to patrons that their employer's cafeteria food contained rat hairs.[16] Violence and strike misconduct were encouraged by the Board's holding that "minor" distruction of property was excused as long as it was a "predictable reaction" to an employer's denial of employee rights.[17]

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[13] A. Duie Pyle, Inc., 263 N.L.R.B. 744 (1982), enforcement denied __ F.2d __, 115 L.R.R.M. 3428 (3rd Cir. 1984).

[14] Georgia Kraft Co., 258 N.L.R.B. 908 (1981), enforced 696 F.2d 931 (11th Cir. 1983), cert. granted 52 U.S.L.W. 3386 (Nov. 14 1983).

[15] Chevron, U.S.A., Inc., 255 N.L.R.B. 1380 (1981), enforcement denied 672 F.2d 359 (3rd Cir. 1982).

Similarly, a Fanning led majority encouraged the breakdown of shop floor discipline when it held that an employee is protected when, "face to face, inches apart," he "pushes away" (i.e., shoves) his supervisor, announces that he will talk any time he pleases, and threatens that if the supervisor were not an old man, he would "stomp [his] goddamn ass in the floor."[18] The majority justified this conclusion on the basis that the employee was provoked by a supervisor's campaign of harassment. Mercifully, the majority did acknowledge that fighting with, hitting, or slapping a supervisor would be unprotected. Employees who spread unsubstantiated allegations about employer sexual misconduct also were insulated from discipline as long as they were engaged in some semblance of protected activity at the same time.[19]

16/ Furr's Cafeteria, Inc. 251 N.L.R.B. 879 (1980).

17/ Import Body Shop, 262 N.L.R.B. 1188 (1982) Member Hunter dissenting.

18/ E. J. Du Pont de Nemours, 263 N.L.R.B. 159 (1982).

19/ Tyler Business Systems, 256 N.L.R.B. 567 (1981), enforcement denied 680 F.2d 338 (4th Cir. 1982).

The Fanning-Jenkins led majority demonstrated its further ignorance of the realties of the workplace in its 1982 holding in L.A. Water Treatment, 263 N.L.R.B. 244. In that case the Board majority announced that union represented employees have a right to bring a non-union witnesses to investigative interviews conducted by management. However, this right only exists, the majority said, where there would be "no-conflict" between the non-union witness and the union's representational role. And mind you, all the right conclusions must be reached by supervisors before conducting the interview in order to avoid violating the Act. The net result of this mindless decision is to discourage management from conducting any interview at all.

Of course, the zeal for protecting employee interests of members Fanning, Jenkins, and Zimmerman waned when they collided with the institutional interests of unions. Thus, said this majority, a union can have a rule prohibiting strikers from resigning from the union and returning to work without giving 30 days notice to the union.[20/] No matter that the striker might be permanently replaced by his employer while waiting for the notice period to expire. No matter that Section 7 of the Act specifically guarantees the right of employees to refrain from union activity. This was

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[20/] Machinists Local 1327, District Lodge 115 (Dalmo Victor), 263 N.L.R.B. 984 (1982), enforcement denied ___ F.2d ___ (9th Cir. 1984).

a clear case of the express statutory rights of employees colliding with implied union institutional interests in "solidarity." As between the two, it is interesting to note which one was required to yield by the Board majority.

Similarly, contract clauses giving union officers, like "trustees," superseniority rights in cases of layoff were sanctioned by the Fanning majority as long as such officials had functions which relate in general to furthering the bargaining relationship.21/ And, in 1982 the Board reversed precedent to require employers to continue bargaining for a new contract with an incumbent union, even while employees were seeking to oust the union through a Board decertification election.22/

A close examination of the Board cases I have mentioned should convince any objective observer that decisions by Board majorities between 1977 and 1983 left much to be desired. Many of these holdings made little sense from the standpoint of national labor policy and, clearly, many were out of touch with the realities of the workplace.

Let us be clear, then, about the recent complaints by representatives of organized labor. These representatives only profess to be complaining about Board reversals of "sound" precedents. In truth, they are complaining that the

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21/ American Can Co., 244 N.L.R.B. 736 (1979).

22/ Dresser Industries, Inc., 264 N.L.R.B. 1088 (1982).

present Board is reversing precedents that they like and which give tactical advantages to the unions they represent. Similarly, claims by these critics that the current Board is reversing "long established" precedent, in my view, is purposely misleading. The precedents being changed are of recent origin, and the Board is merely returning the law to the more balanced state which existed before the predecessors of this Board bent it out of proportion.

Why, for instance, do union critics complain when the current Board requires contracting parties to live up to their commitment to arbitrate disputes susceptible to resolution under agreed-upon contractual procedures?[23] It could be that union representatives prefer to have the Board resolve their disputes, without the costs of arbitration. And, why are union representatives critical when the Board revitalizes the policy of deferring to arbitration awards?[24] It could be because they would like to have two bites at the apple -- one before an arbitrator and one before the Board.

Why do union representatives complain when the current Board honors the bargain struck by the parties to collective bargaining by refusing to read provisions into contracts which are not there?[25] It may be because unions would rather "win" plant relocation prohibitions through Board construction instead of through the collective bargaining process. Why do union representatives complain when the Board refuses to require employers to bargain about business decisions which do not turn upon labor-cost considerations?[26] It could be that they see some tactical advantage to having mandatory bargaining subjects defined so broadly that unions may be able to thwart or delay implementation of decisions they do not like.

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[23] United Technologies Corp., 268 N.L.R.B. No. 83 (1984).

[24] Olin Corp. 268 N.L.R.B. No. 86 (1984).

[25] Milwaukee Spring Division of Illinois Coil Spring Co., 268 N.L.R.B. No. 87 (1984).

Why do union representatives complain when the Board returns the law to where it was in 1981 and says that avowed and announced union activists can be asked uncoercively by management about the advantages or disadvantages of unionism?[27] It could be that the rule rejected by the Board provided a handy trap for unwary employers whose innocent statements may be used to set aside elections which unions have lost. And, why should union representatives complain when the Board again returns the law to where it was in 1981 and distinguishes between no-solicitation rules which forbid union solicitation during "working time" and "working hours?"[28] It could be that union representatives prefer a rule which makes no such distinction because it encourages union solicitation.

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[26] Otis Elevator, Co., 269 N.L.R.B. No. 162.

[27] Rossmore House, 269 N.L.R.B. No. 198 (1984), overruling PPG Industries, 251 N.L.R.B. 1146 (1980).

[28] Our Way, Inc., 268 N.L.R.B. No. 61 (1983), overruling T.R.W. Bearings, 257 N.L.R.B. 442 (1981).

Let us be frank with outselves about the motives of those who have been so critical of Board decisions in recent months. They simply prefer things the way they were; the way Board appointees, whom they supported, construed the law. They really are complaining about a loss of tactical advantages it took them years to obtain through Board construction, tactical advantages to which they were not entitled under more balanced interpretations of the law to which this Board has returned.

The Board's present critics may be concerned about other things too. They may be concerned that the lead decisions recently issued by the Board are likely to be sustained by the courts, making their principles harder to dislodge in the future. Because these lead decisions respond to the concerns of courts about the directions of earlier Board decisions, they are, indeed, likely to be sustained by the courts. Thus, the critics have something to worry about.

These critics are also concerned that there are more changes to come, i.e., that other "established precedents" will be modified by the Board. They are correct, I predict. There are a variety of areas of Board law that are in dire need of correction after the distortions they suffered under earlier Boards. It is not unpredictable that organized labor would adopt a damage control strategy, i.e., of generating distorted claims about Board decisions and the Board in an attempt to influence its members and, wishfully, the Board's composition.

Exaggerated and feigned outrage about the Board decisions and personnel also could provide a predicate for new labor law "reform" initiatives. In fact, one union witness recently told this committee that the NLRA is "no longer alive" and is "an albatross on the labor movement." What he means is that because the Act is being more neutrally administered, it is not working to the advantage of unions. Legislative "reforms," union spokesmen have argued, are needed to revitalize the Act and promote collective bargaining. What they really mean is legislative changes are needed to facilitate union organization and promote unionism. It is convenient then, to blame the Act and the Board for their lack of success in recent years in attracting workers to their cause.

When current union complaints about the Board are put in perspective, it is clear that they are comprised more of rhetoric than reasoned analysis. Impure motives are attributed to current Board members. Those appointed by President Reagan are said by critics to be antiworker, antiunion, anti-Act, anti-collective bargaining, and so on. Could it be that these shallow criticisms have anything to do with election year politics? Could it be that union advocates in search of election year issues are seeking to discredit the President by discrediting the Board members he has appointed?

To me, these are better explanations for the current wave of union generated criticism of lead Board decisions, for the truth is that these decisions do little more than return the law to the more balanced posture it was in prior to 1977. The truth is that the precedents being reversed are the ones that are imbalanced, not the ones that are doing the reversing.

In conclusion, then, it is evident to me that decisions recently issued by the Board evidence no "breakdown in the labor laws." On the contrary, the restoration of balance and a return to reasoned, balanced principles are clear evidence that the labor laws are working. The balance is swinging to the middle, not the right, as labor spokesmen would have it. This correction is long overdue and will result in the enhancement of the labor law, not its "failure."

I disagree with labor's claims that collective bargaining is dying, that there is a tide of anti-unionism sweeping the management community and government agencies, and that frustrated workers and unions are prepared to avoid the Board and take to the streets. If workers are upset with the Board, this has less to do with Board decisions and more to do with the misinformation, predictions of doom, and unsupported charges of bias about the Board emanating from labor spokesmen and echoed by sympathetic elements in the media and elsewhere. The truth is that workers are being misled by the very union spokesmen who aspire to lead them. If the labor laws break down sometime in the future, it will not be because of Board decisions. Rather, those who have embarked on a negative strategy which encourages disrespect for law, the Board and the Act, will have themselves to thank.

I wish to thank this Committee for affording me the opportunity to express my views.

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Professional Theatre
Actors' Equity Association
Founded in 1913

Executive Secretary ALAN EISENBERG
Executive Consultant WILLARD SWIRE
Counsel COHN, GLICKSTEIN, LURIE OSTRIN, LUBELL & LUBELL
BRANCH OF ASSOCIATED ACTORS AND ARTISTES OF AMERICA
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INTERNATIONAL FEDERATION OF ACTORS (FIA)

165 WEST 46th STREET • NEW YORK, N.Y. 10036 • TELEPHONE (212) 869-8530

September 25, 1984

Honorable Don Nickles, Chairman
Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate
Washington, D.C. 20510

Dear Chairman Nickles:

On behalf of the Actors Equity Association, a union of over 30,000 professional actors, singers, dancers and stage managers who work in the "live" dramatic and musical theater, I write to state our vigorous support for the Performing Arts Labor Relations Amendments (S.281).

However, because of the nature of the live theater business, the need for the amendment to section 8(f) of the National Labor Relations Act (NLRA), which would be made by section 3(a) of the bill is of particular urgency. This amendment to the NLRA would extend to the live entertainment industry the same procedures now accorded to the construction industry with regard to pre-hire and union shop agreements.

I believe this is wholly justified and in accordance with national policy. The members of the Actors Equity Association and their employers face the same employment patterns which exist in the construction industry and led to the 1959 Landrum-Griffin amendment to section 8(f) of the NLRA. Employment is largely casual and usually of very short duration. The length of a professional performer's employment in the theater most often depends on the box office appeal of the production in which he or she appears. Many plays and musical productions close the day after they open or shortly thereafter. Most jobs therefore are of less than 30 days duration.

Because of the short term life of most enterprises in the theatre industry the use of the pre-hire agreement is vital if needed predictability and stability in employer-employee relations is to be achieved.

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As you may know, The League of New York Theatres and Producers - National Association of Legitimate Theatres (the largest association of producers and theater owners in the United States) supported similar amendments to section 8(f) of the NLRA in hearings before Subcommittees of the House Education and Labor Committee in 1966 and 1977. This legislation is badly needed.

Current provisions of the NLRA are clearly at odds with the realities and long standing labor relations practices in the live theater. Enactment of the amendment to section 8(f) as contemplated in S. 281 would be a major step towards improving labor-management relations in the theater.

I would appreciate it if this letter were included in the hearing record on S. 281.

Sincerely,

Alan D Eisenberg

Alan Eisenberg
Executive Secretary

AE/jt

Mr. Chairman and distinguished members of this committee:

My name is Thomas Lee and I want to thank you for giving me this opportunity to express my concern over a very serious problem.

I would first like to

offer you a short report about my background. I was given private music lessons starting at age eight. Upon graduation from high school in 1962, I entered the Berklee School of Music and after five months I transferred to the College Conservatory of Music of the University of Cincinnati where I completed my musical education. In 1966, I joined a "pop" band that traveled throughout the United States performing in a variety of small restaurants and nightclubs. After about a year, I joined the United States Marine Band of which I am a member today. I am also a member of the Executive Board of the D.C. Federation of Musicians. This background plus the experience I have in the club date and steady engagement field qualifies me, I believe, to speak with some authority on one aspect of this issue.

Please understand that I am addressing you not as Master Sergeant Thomas Lee of the United States Marine Band but as a musician in a civilian capacity concerned about the economic welfare of my brother and sister musicians.

I would like at this time to present a short story that best illustrates a problem that musicians in the "pop" field all to often encounter.

A booking agint books Band A into a nightclub for four weeks. Ten days later, the owner of the club discovers that Band B is available for a six week engagement. Although the manager likes Band A, Band B is really his favorite and he would like to employ Band B for six weeks. The club owner calls the booking agent and tells him to cancel Band A and send in Band B. The members of Band A, thinking they were employed for a month now find themselves out of work. In addition, they may be several hundred miles from home. The question now is "What are the options available to Band A?"

Band A may:

1. complain to the booking agent.
   This does little good because the booking agent wants to keep the club owner happy. He will still collect his commission on Band B so it matters little to him which band plays in the club.

2. File a lawsuit against the club owner for breaking a contract.
   This won't work because by the time thc case is scheduled in court, the Band will probably be working in another state. The club owners are awarethat the members couldn'tafford the time or expense of returning for a trial and if the could return, any award would most likely be consumed by attorneys fees.

3. calltheir Union for assistance.
   The N.L.R.B. has ruled that the nightclub owner is not the employer of musicians but merely the purchaser of music. Since no employer-employee relationship exists, the Union is legally unable to intercede on behalf of the musicians.

As you can see, there is no positive option for the musicians. The club owner doesn't suffer. The booking agent doesn't suffer.

THE MUSICIANS SUFFER. The inability of the A.F. of M. to enforce contracts and negotiate scales causes the musicians to live from day to day with little chance of earning a decent wage. How many times have you met someone who said " Iused to play in a band but I had to quit because I couldn't make a decent living."

Sometimes we don't realize how important music is in our lives. Whenever we turn on the radio, we hear music. Most radio stations exist only by playing recorded music and in fact would go out of business if records weren't readily available. Even on "talk stations' one can hear music in the bacground as the commercials are played. Music is piped into stores and offices because of the positive psychological effect it has on workers and their output. Music can raise the spirit of patriotism with a stirring march such as "Stars and Stripes Forever" Music can make you happy with a snappy dixieland beat or it can soothe the "frattered" nerves with a soft melody or two. It cannot be denied that music touches all of us either corsciously or unsciously on a daily basis. It is this group of people that provide a product that has such a profound impact on everyones lives that need your help today.

When Taft-Hartley was written, we can be sure that its intent was to establish a set of rules and regulations for the traditional industrial model by which labor and management could equally benefit. A few years ago, it became apparent that not all employment patterns fit this traditional industrial model and therefore not all employees benefited from Taft-Hartley. Congress remedied this problem by passing amendments to Taft-Hartley that extended to some short term employees the equivilant benefits enjoyed by long term industrial employees.

Short term employment is a fact of life in the music business. Whether it is a band playing either a single club date or two to six weeks in a nightclun, the wast majority of our members are short term employees

At present, we are members of a union that because of an N.L.R.B. ruling, does not have the authority to negotiate scales with rextaurant and club owners on our behalf. I am sure that this was not the intent of Taft-Hartley and I sincerely request that you give to musicians the same benefits that are now enjoyed by other short term employees. Thank you very much for your consideration of this important matter.

Master Sergeant Thomas Lee
10612 Greene Drive
Lorton, VA 22079
(703) 550-9226

RE: S. 281 and H.R. 5107

My name is Kelly L. Castleberry II. I am currently President of Appalachian Regional Musicians Union Local 136, American Federation of Musicians, located in Charleston, West Virginia.

I began my professional career in music in 1964 by working in local and traveling bands throughout the Eastern United States, which was my main source of income until 1969.

In 1969 I began working for Local 136 on a part-time basis as a business agent. In 1972 I was elected Secretary-Treasurer of Local 136 and held that office until 1974. In 1975 I was employed by the Laborers District Council of West Virginia, Laborers International Union of North America, as an organizer and representative of non-construction members of L.I.U.N.A. In 1977 I returned to work for the American Federation of Musicians as an International Representative to service local unions in an assigned territory. In 1980 I resigned from that position so I could return to West Virginia to be involved in a family business and also to continue performing as a professional musician in and around the Charleston, West Virginia area. I was installed as President of Local 136 in January, 1983, and continue to hold that position today.

When I first joined the musicians union, and in the early years when I was a local union officer, the A. F. of M. could effectively speak for and represent its members the way other unions are permitted to operate under the Law.

Up until about 1978, when the A. F. of M. settled a sizable number of Unfair Labor Practice cases with the National Labor Relations Board, the A. F. of M. had been dealing with lounge operators, club operators, and hotels as if they were the employer (for labor purposes only and not for taxes) which is truly what they are by anyones definition of employer by the means in which they control the jobs, i.e. what time to start, what to wear, how loud to perform, etc.

The imposition of the settlement agreement with the National Labor Relations Board has weakened the unions position in its effort to represent its members for which they are paying dues.

The two important issues at hand are the ability to negotiate Pre-hire Agreements with the employers and the right to negotiate the Union Security Agreement for employment which goes beyond 7 days. Though our Union only establishes minimum amounts for wage scales, it is necessary for local unions to be able to negotiate with employers or employer associations agreements to cover sucn minimum standards so the performers cannot be forced to work for less than prevailing area standards with no one to turn to for assistance. Further, due to the transient nature of the majority of the music business, whereby most engagements in lounges and hotels run two, three, or four weeks, and very seldom extend beyond this amount of time the A. F. of M. should have the same rights under the Act to negotiate for union membership after a 7-day period as in the the Construction Industry, as opposed to the current 30-day period, which parallels the Industrial Unions where people work in the same location day after day for their entire working life.

Our detractors will say we are not entitled to such provisions of the National Labor Relations Act because we are not like the Construction Industry, but I submit that with the exception of a true Hiring Hall provision we closely resemble the operation of a typical Construction Local whereby our members work a few days in one location then move to another, and so on.

Thank you for the opportunity to submit these comments in regard to my feelings on the above referenced legislation, and welcome the opportunity to add anything further which may be requested by any members of your Committees.

KELLY L. CASTLEBERRY II, PRESIDENT
LOCAL 136 AMERICAN FEDERATION OF MUSICIANS

WISCONSIN ORCHESTRA LEADERS ASSOCIATION

Affiliated with National Association of Orchestra Leaders

September 26, 1984

Senator Don Nickles, Chairman
Senate Sub-Committee On Labor and Human Resources
428 Dirkson Senate Office Building
Washington, D. C. 20510

Dear Semator Nickles:

I represent the Wisconsin Orchestra Leaders Association (WOLA) whose members include many of the states top names in the music business. I was delegated by the members to represent our organization at the hearings being held on S.281, BUT Because we found out about these hearings to late to attend, I now submit this letter in OPPSITION to S.281:

First a bit on my background, I am 55, have been in the music business since 1945. At that time I was forced to join a union or not work! I was indoctrinated in the Union ways and became a staunce member until such time, in 1957, I became an Orchestra Leader and found that that same Union greatly hampered my chances of promoting my orchestra. In 1964,myself along with many of my cohorts here in Wisconsin, formed the WOLA and teamed-up also at that time with the National Association of Orchestra Leaders to try and free ourselves of some of the burdens the Union was putting on us and to also promote the music business. I'll not list the cases lost by the American Federation of Musicians (the Union that I have been referring to) because you allready have them listed in a letter to you dated September 7,1984 from Mr. Godfrey Schmidt, Counsel for the National Association of

Leaders. However, I will state at this time that because of the cases lost by this Union they have since tryed to influance passage of various bills in both the Senate and House to reverse these decisions madeby the National Labor Relation Board. In Senate bill S.281, they are trying again! They have failed in ten previous attempts, I urge you to let them fail again! Here's why:

Most of we Band Leaders are Self-employed, individual contractors: What the Union is proposing is that the people and places of business that we contract from, be considered the Employer. Now can you imagine yourself as a Club Owner,booking live music, (for the sake of numbers we'll use round figures, OK?) a new group every other week: Each group contains 8 members: That's 208 people a year that he will have to keep extra books on (Social Security, State & Federal Witholding, Insurance, Addresses and Changes of Addresses on people moving about from one end of the Nation to the Other) This in addition to his regular help: Doesn't make much sense to put up with this when he could go to recorded music, does it? There-by putting LIVE performers OUT OF WORK!

As I stated earlier in February of 1964 a large group of concerned Orchestra Leaders from Wisconsin met at Green Bay to discuss the increasingly prevalent problems and inequities facing the music-dance business which allready at that time loomed as a great threat to the live music field. Due to illegal assessments and unwarranted pressures aimed at leaders imposed by the American Federation of Musicians, it became evident that under Federal and State Labor laws, leader-employers or musical contractors had no rightful place in a labor organization. In various court proceedings instituted by the National Association of Orchestra Leaders, contention that various by-laws of the A.F. of M., which embraced its membership: Leaders-employers, sidemen-employers, booking agents, managers, and among other things fixed minimums for employers to charge for their sevices was contrary to the National Labor Relations Act and in violation of the Sherman Anti-Trust Laws.

Being disenchanted with the unrealistic policies of the A.F. of M., yet with fervent drive for the continued promotion and progression of the orchestra-dance field, Orchestra Leaders felt it nessesary that anAssociation be formed to fill the need for an employer-managment organization which would endeavor to promote the welfare of it's members by eliminating abuses and unfair practices within the live music industry, and to obtain freedom from the unjust and unlawful procedured which had plagued leader-employers in their pursuit of American Free Enterprise.

So it was that in 1964 with the help of Mr. Charles Peterson of the National Association of Orchestra Leaders, the Wisconsin Orchestra Leaders Association was formed and has continued to work for the benefit of the LIVE MUSIC BUSINESS for both the Union and the Non-Union musicians:

Senate S-281 , promoted by the UNION (A.F. of M.) would negate all these years of hard work for LIVE MUSIC which is allready sufferring from the effects of the Electronic Industry as well!

It is a last ditch effort by the A. F. of M. to force themselves on ALL Musicians as well as anyone booking live music. I ask that you again imagine yourself, this time as the father of a lovely young lady about to get married:

You've raised this child from babyhood to lady, you've allways wanted the best for her so now for her wedding you want the best Band in town. However, should S-281 be enacted, you also find that as father-of-the-bride you are also employer of,lets say 10 musicians, for whom you have to establish and withold State and Federal taxes Social Security, addresses,ect. So you say, the Hell With It and book a Disk-Jockey!

I know I've probably gone a bit off the track but I am trying to make the point clearer by way of association, remember the old Indian Proverb," I'll not critisize another until I've walked a while in his moccasins"! Well, I've been in the Union (A.F. of M.) and I know of where I speak, and there are many others like me, Bandleaders who have left the ranks of the Union because of the polocies invoked by that organization. Not only have we been attacked by the Union almost yearly but we've had a very large problem right in the National Labor Relations Board under Mr. William A. Lubbers. Even after the rulings of the board hearings went against the A. F. of M, Lubbers advised not to be to harse with them and to give them a chance to get their act together and so the rulings against them were held in abayance for as long as three years, This in America where we are supposed to have freedoms!

I know you've heard from many other people in this regard so I'll cut this short and hope I've made some sort of impression.

I DO URGE OPPOSITION TO SENATE BILL S-281, on the final grounds that it will only Hurt Not Help anyone and that includes the members in the American Federation of Musicians:

May I remain most sincerely and musically yours

Jay Q. Wells

Jay Q. Wells

JAY WELLS and His Red Raven Orchestra (Old-tyme)
JAY WELLS ORCHESTRA (Modern band)

Jay Wells

honored by the

WISCONSIN ORCHESTRA LEADERS ASSOC.

as

"ORCHESTRA LEADER OF THE YEAR 1977"

Jay Wells MUSIC ASSOCIATION
P. O. Box 812
Appleton, Wisc. 54911
Ph. (414) 734-4789

A MAN AND HIS MUSIC, THAT'S JAY WELLS!

Like another well-known bandleader, he has gone from farmboy to a high-class name in the entertainment business. Jay actually started performing in a family band at the ripe old age of 9, at 15 he joined the professional ranks, and has been at it ever since:

In addition to being an active musician all these years, Jay has also devoted 24 years to the broadcasting-telecasting business. He has appeared in 3 movies, playing a starring role in 2 of them, and he has some 50 single recordings to his credit. Some of these are complied into albums, the latest being "Something Old, Something New, Something Borrowed and Something Blue" with the Red Ravens. Severel of the numbers are original compositions by Wells. The title was chosen because the Red Ravens have been widely considered the Glenn Miller Band of the Old Tyme music field. The band has that SOUND that immediately identifies them!

Today, the Jay Wells Musical Organization consists of the 5-piece Show Combo which performs for anything from Nite-clubs to weddings. The Modern Orchestra ranges in size from 10 to 15-piece and performs the sounds of the Big Bands wherever they can. In fact the orchestra can give you over an hour of Big Band salutes, in addition to the Show!
The Red Raven Orchestra is the Old Tyme music segment, although all the groups are easily intermingled to give you a show as well as some of the best dancing music anywhere.
The Red Ravens were originally formed by the late Lawrence Duchow and while under contract to RCA records, released over 300 singles. These include the famous Swiss Boy and Blue Skirt waltzs. Jay has been operating the band since 1960, Duchow started it in 1932:

If you would like more information kindly drop a line or call, OK?

REPLY OF ROBERT J. PRICE TO UNITED AUTO WORKERS' RESPONSE TO MY TESTIMONY BEFORE THE SUBCOMMITTEE ON LABOR OF THE UNITED STATES SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES CONCERNING AMENDMENTS TO THE TAFT-HARTLEY ACT

INTRODUCTION

On September 13, 1984 I testified before this Subcommittee about certain undemocratic activity undertaken at Electric Boat by the UAW and its affiliated Marine Draftsmen's Association. The UAW submitted a written response to my testimony in order to "set the record straight" while at the same time complaining that it wasn't invited to testify before the Subcommittee. Because the UAW's Response has, instead, distorted the record, I am compelled to submit this Reply to correct those distortions.

I would first like to note, however, that UAW/MDA President, Roy Colville, and UAW President, Owen Bieber, testified 2 1/2 months ago before the House Labor Subcommittee on Labor Relations and Safety and Health alleging that Electric Boat is a union-busting company and that it provoked strikes in 1979 and 1983. I was not invited to testify at that hearing or even invited to submit a written response, an opportunity which was afforded the UAW by this Subcommittee. Fortunately, I was provided a chance by this Subcommittee to expose the earlier misrepresentations by Mr. Bieber and Colville which Electric Boat had inadequately addressed.

I would like to thank you, Senator Nickles, for allowing me to submit the following Reply to "re-correct the record" which the union has regrettably perverted once again.

UAW Response

1. Price has portrayed himself as just another employee, who is simply sticking up for the rights of individual workers.

Fact: Price has been and continues to be represented by attorneys for the Center on National Labor Policy, an anti-labor group which we understand is associated with the National Right to Work Committee. Price has a long history of anti-union activities, having crossed the MDA's picketlines to break their strikes in 1979 and 1983; having opposed the affiliation of the MDA with the UAW in 1982; having resigned from membership in the UAW in 1983; and having led an unsuccessful effort to decertify the Union in 1984.

REPLY OF ROBERT PRICE

Correct Fact: I have been represented by the Center on National Labor Policy only since June 28, 1984. Prior to that date I was completely on my own receiving no legal advice from anyone with respect to adversarial legal proceedings involving interests I represented and interests represented by the union. I undertook, on my own, to demonstrate to the NLRB that the "decertification" election which the *union* had sought earlier that month was a fraud and a sham. *See* Subcommittee Statement of Robert Price at pages 6 and 7, September 13, 1984 (hereinafter "Price Statement").

The Center on National Labor Policy is not associated with the National Right to Work Committee. It is not anti-labor but it does oppose labor unions like the UAW/MDA Local 571 which has callously disregarded the interests of its membership while seeking, instead, to maintain its own preservation. The Center, in fact, receives contributions from union rank and file members.

I do not have a "long history" of anti-union activity. From the time I began working at Electric Boat in 1957 until the union instituted its coercive by-law amendment in 1979 to restrict membership resignations, I, and hundreds of other fellow workers had been enthusiastic members of the MDA. As I explained in my Statement, it was only after the adoption of that amendment coupled with the union's refusal to conduct a secret ballot strike authorization vote in 1979 and its refusal to bargain with Electric Boat which caused the 1983 strike, that I became disenchanted with the union *leadership* and decided to commence and maintain oppositional activity.

Before my attempt to decertify the union, however, I sought reforms by first calling for the resignation of President Colville, whose regime was largely responsible for the increased turmoil at the plant over the last five years. In addition, I asked that amnesty be declared to more than 400 members who crossed picket lines and were fined for protesting the illegal resignation by-law and unauthorized 1979 strike. Only when these efforts were rejected did I, and a *majority* of the *current work force*, resort to an attempt at complete removal of this cancerous union through the NLRB's decertification procedures.

Ironically, *my* attempt to remove the union was aided tremendously *by the union itself* when its agent, Robert Canova, filed a decertification petition. Unfortunately, he filed the petition before the strike's twelve month anniversary date resulting in the voting eligibility of many strikers who have not and will not ever work at Electric Boat again.

Despite this travesty generated by the union, I am confident that, eventually, the current work force at the company will succeed in ridding ourselves of this union. The UAW has made the remarkable assertion that I led an unsuccessful effort to decertify it this year. To the contrary, my effort, supported by a majority of my fellow employees, has just begun. The decertification results are now before the NLRB in Washington and I am confident that its forthcoming decision will establish our success.

UAW RESPONSE

2. Price has complained about the union's procedures for calling strikes, contending that they are not "democratic" because the workers allegedly have not been allowed to vote on whether to authorize strike actions.

Fact: Article 50, section 1, of the UAW Constitution (a copy of which is attached), expressly requires that the membership must vote in favor of strike authorization by a 2/3rds vote in a secret ballot election, before any strike action can be taken.

Fact: Prior to the commencement of the strike in 1983, a secret ballot vote was in fact conducted by the MDA-UAW Local Union. The workers voted overwhelmingly in favor of strike authorization by a vote of 1247 to 265.

Fact: Prior to the commencement of the strike in 1979 (before the MDA affiliated with the UAW), on two separate occasions at general membership meetings, motions to grant the MDA bargaining committee the authority to call a strike were overwhelmingly approved by the membership. The second motion that was adopted also directed the bargaining committee not to bring the company's last offer back for a vote by the entire membership, unless the committee was prepared to recommend it. Because the Company's final offer contained numerous concessions and was generally unaccpetable, the bargaining committee was precluded by that motion from conducted a general vote on the company's offer.

REPLY OF ROBERT PRICE

Correct Fact: I did not testify that the union refused to conduct a secret ballot election of the membership before going on strike in 1983. Indeed, by that year the MDA had affiliated with the UAW whose constitution, as noted, requires such a procedure.

My testimony was that an authorization vote was conducted in 1983, but approximately 50% of the membership was not in good standing and were prohibited from voting following the aftermath of illegal fines assessed against them for crossing the picket line and returning to work during the unauthorized 1979 strike. Price Statement at 5. Therefore, only two-thirds of those who voted condoned the strike. Furthermore, the members' strike decision was clouded by false assurances of Colville that the strike would end in two weeks due to the inability of EB to carry on submarine design work without the strikers. Believing this, the members were unable to make a meaningful decision on whether to strike.

The UAW does not deny that the 1979 strike was called without a secret ballot election. Its assertion that a motion was approved to give the union's bargaining committee authority to call a strike does not address the significance of my Statement. President Colville pledged repeatedly in 1979 that he would never take the union on a strike without a full membership authorization vote, -- but he did!! Reposing authorization to call a strike in a small contingent of bargaining committeemen instead of the entire membership is exactly what I object to and is why I came to Washington to urge reform.

UAW RESPONSE

3. Price has raised numerous objections to the circumstances and procedures connected with a decertification election that was conducted by the NLRB with respect to the MDA-UAW Local Union on June 8, 1984.

Fact: The NLRB has rejected all of the challenges brought by Price against the decertification election. Specifically, the NLRB Regional Director has ruled that:

-- the decertification petition filed by a striker which served as the basis for the June 8th election was valid;

-- the various objections filed by Price challenging the manner in which the election was conducted are without foundation.

Fact: Based upon the decision of the NLRB Regional Director dismissing Price's objections to the decertification election and challenges to certain ballots, it is likely that a tally of all the ballots would establish that a majority of the employees have voted in favor of continued representation by the MDA-UAW Local Union. Instead of accepting the will of the majority as expressed in this democratic election, Price and his "right-to-work" allies have recently filed unfair labor practice charges against the company and the union contending that they violated the law by entering into a new contract in August 1984 while the decertification election was still pending. However, the NLRB has previously ruled (in decisions issued by the Dotson Board) that an employer still has a duty to bargain with a union, and may enter into a new contract with the union, notwithstanding the pendency of a decertification election. See Dresser Industries, Inc., 264 NLRB No. 145 (1982); Benchmark Industries, 116 LRRM 1005 (1984). Thus, the unfair labor practice charges filed by Price in an effort to circumvent the results of the decertification election do not have any validity. It is important to note that the results of the decertification election still will be dispositive of whether or not the employees will continue to be represented by the MDA-UAW Local Union; the fact that the company and the union entered into a contract during the pendency of the election in no way alters this fundamental democratic principle.

Fact: Although Price has objected to the filing of the decertification petition by a striker and the holding of the decertification election prior to the first anniversary date of the commencement of the strike, the fact is that Price originally filed his own decertification petition on May 14, 1984 -- also prior to the anniversary date of the strike. However, Price quickly withdrew his petition after discovering that the striking employees would be eligible to vote in the decertification election. It appears to us that Price wanted the decertification petition filed and the decertification election held after the anniversary date of the strike, so that all of the striking employees -- a majority of the workforce -- would be precluded from voting. Thus, it appears that Price was not interested in having an election to determine the wishes of a majority of the employees in the bargaining unit on whether they want to continue to be represented by the MDA-UAW Local Union. Rather, it seems that he was simply interested in getting rid of the Union, by structuring the election so that only those employees who crossed the picketlines -- a minority of the total workforce -- are allowed to participate. Clearly this is contrary to the democratic principles embodied in the Taft-Hartley Act.

REPLY OF ROBERT PRICE

Correct Fact: Incredibly, the UAW states that my Objections and Challenges with respect to last June's decertification election have been rejected by the NLRB. This is totally false -- my attorneys filed my Objections and Challenges with the full NLRB in Washington, D.C. on September 26, 1984 -- two weeks after the UAW prepared its Response to my testimony. A final decision by the NLRB will not be forthcoming until, perhaps, early in 1985.

What the UAW did not make clear is that the Regional Director of the NLRB located in Boston, Massachusetts rendered a "Supplemental Decision" dismissing my Objections and Challenges. But his decision, which the UAW has misrepresented to this Subcommittee as being final, has absolutely no force and effect unless and until the full Board in Washington affirms it. As indicated above, my attorneys have filed an appeal of that ruling and a final decision by the Board will not be issued for approximately six months.

Next, the union states that I refuse to accept the will of the majority, which the union believes "likely" voted in favor of representation, by filing unfair labor practices against the company and union for reaching a new three year agreement while the election results are pending before the Board. If the Board dismisses my Challenges regarding the voting eligibility of many strikers, it is very "likely" that the tally of ballots will establish the union as the winner. But I maintain that many strikers who voted were ineligible because their jobs were either eliminated or they found new employment elsewhere thereby indicating an intention never to return to Electric Boat again. My argument to the Board challenging the votes of these strikers highlighted the "anomalous result [which would be] obtained . . . , [if] the ghosts of a multitude who have remained outside the employment relationship for more than [one] year, and are likely to so remain, are allowed to determine the mode of industrial life for the few who live within it." Therefore, contrary to the union's opinion, the election would be more democratic if the Board only counts the votes of those workers who will remain at the company, - i.e. those who were working on election day and those strikers likely to return. If the Board accepts my position, it is virtually certain that the tally of ballots will expressly reject the union.

It is precisely for this reason that I filed the unfair labor practices objecting to the execution of a new agreement while the representation question is pending. If the Board upholds my position six months hence with respect to my Challenges and the union is voted out, the employees will have been saddled with an unwanted union and will never recoup the union dues forcibly extracted from them during that interim period. The General Counsel Division of the Board's Regional Office in Hartford, Connecticut has declined to issue a complaint against the company and union for entering into a new contract but I hope that on appeal to the General Counsel's office in Washington, the dismissal will be overturned.

Finally, it is true that the NLRB Regional Director upheld the filing of the decertification petition by a striking union supporter but the full Board has not. It is also true that I filed a decertification petition on May 14, 1984 and quickly withdrew it when, being without legal counsel, I did not realize that many, but not all, strikers would be able to vote if the election was held before the anniversary date of the strike. Contrary to the union's response, I was interested in having an election to determine the wishes of a majority of employees of the existing and potential future workforce (e.g. returners, replacements, and non-replaced strikers), excluding those whose jobs were permanently eliminated or those who found permanent jobs elsewhere and would never return but whom the union believes should, nevertheless be allowed to vote and determine whether we should be represented by the union. I submit that my position is more consistent with the democratic principles embodied in the Taft-Hartley Act.

UAW RESPONSE

4. Price has objected to the union security agreement negotiated by the MDA-UAW Local Union, and suggested that such agreements should be prohibited.

Fact: This is the same position which has been advocated for years by the National Right to Work Committee and its associates. Congress has always rejected this position, and has expressly permitted such union security agreements, except where states have enacted so-called "right-to-work" statutes.

Fact: Invalidating union security agreements would be inequitable. Under present law, the MDA-UAW Local Union is required to represent all employees in the bargaining unit -- regardless of whether they are members of the Union. Specifically, the Union must fairly represent non-members such as Price both in grievance and arbitration proceedings and in contract negotiations. Since the Union is required by law to represent non-member employees, it is only fair to require those non-member employees to pay their fair share of the costs associated with grievances, arbitrations, and contract negotiations. This is all that is required under the union security agreement.

REPLY OF ROBERT PRICE

Correct Fact: Congress has not rejected my position that collective bargaining agreements with union security clauses which require all employees to join a union, should be prohibited. Congress specifically provided in Section 9(e)(1) of the NLRA, 29 U.S.C. §159(e)(1), for a deauthorization election to determine whether employees wish to prohibit a union from enforcing a union security clause against them. We have attempted to take advantage of this provision but the NLRB has refused to honor our wishes until the final results of the decertification election are resolved.

Invalidating union security agreements would not be inequitable. The union distorts the picture by making it appear that the law which requires a union to be the exclusive bargaining representative of all employees, whether union or nonunion, was somehow forced upon it. To the contrary -- unions lobbied vigorously during Wagner Act hearings in the 1930's for exclusive representation rights which they successfully obtained.

As I understand the "exclusive representation rule," I, or another individual employee, cannot go to our supervisory employer to ask for a raise, more responsibility, or to discuss a grievance. Instead, the exclusive representation rule requires that I go to the union representative and ask him to discuss my requests with Electric Boat even if I don't want to belong to the union and do not want it to press my grievance for me. I do not want to pay union dues for this representation any more than the union wants to represent me, as a nonmember, in processing my grievance, but this is the way the unions were able to fashion the law. I, and many other employees, are fully capable of handling these matters ourselves.

Nevertheless, I would be willing to compromise on the issue by offering to pay a negotiating fee to the union whenever I needed representation in submitting a claim or request to Electric Boat. But the union won't allow that. It demands every employee to pay the same full amount of dues for these "fair share" costs associated with unwanted and unsolicited grievance handling and contract negotiations.

If the union wanted us to pay only the "fair share" of these costs, it would not require me and other non-members to pay the same full amount of dues which members pay. It is no secret that between 50% and 80% of union dues are spent on matters totally unrelated to grievance and contract negotiations.

For example, the UAW wants to spend my dues to help get Representative Gejdenson re-elected to Congress next month. See Attachment. But I don't want him re-elected. The union also wants to spend my dues on Walter Mondale's presidential campaign. But I don't want him to be president. And just last month, the union sought to spend my dues to support the UAW's strike of General Motors. But I did not support that strike. However, I have received no indication that the UAW would be willing to reimburse me for these unauthorized expenditures.

As long as I am living in America where one's constitutional rights, including the right to associate, take precedence over all other rights, I will fight to my last breath before I will be told that I must join or associate with any softball team, political party, religious institution, or labor organization in order to be gainfully employed.

UAW RESPONSE

5. Price has complained about the MDA's conduct of the strike in 1979-80, alleging that:

   - -- the MDA allegedly failed to tender a proper notice to the company before going out on strike;
   - -- bad faith bargaining by the MDA was responsible for the strike;
   - -- the leadership of the MDA amended the union's bylaws to restrict the ability of employees to resign from the union during the strike and to impose larger fines on strikebreakers, without giving the membership an adequate opportunity to consider the amendments.

Fact: The NLRB subsequently ruled that the notice tendered by the MDA to the company was in fact unlawful.

Fact: The NLRB subsequently ruled that the company was guilty of committing over 50 violations of the Taft-Hartley Act, and that these unfair labor practices were responsible for precipitating and prolonging the strike.

Fact: The entire membership of the MDA was given advance notice of the proposed changes in the bylaws, and the opportunity to vote on the changes at a membership meeting. The changes in the bylaws were approved overwhelming at that membership meeting.

REPLY OF ROBERT PRICE

Correct Fact: This responsorial statement is the most egregiously inaccurate made by the UAW. The NLRB never ruled that the company was guilty of any violations of the Taft-Hartley Act. In fact, no complaints alleging any violations were ever presented for trial before an administrative law judge of the agency, which is a prerequisite step to an NLRB ruling on the complaint.

Following the submittal of unfair labor practice charges by the union against the company, the Hartford, Connecticut sub-regional office of the NLRB issued routine complaints against the company. The issuance of a complaint, however, merely restates the substance of the charge alleged to be an unfair labor practice. No determination of guilt or innocence is made until after a hearing is conducted and a decision is rendered by an administrative law judge. His decision is then reviewed by the NLRB.

Since no complaint in this case ever proceeded to a hearing, no ruling on the company's guilt or innocence was made. Instead, after the company filed unfair labor practices alleging that the union's constitution contained illegal restrictions on member resignations, both sides settled all outstanding complaints including the appropriateness of the union's strike notice. The historical accuracy of this account can be confirmed by calling the sub-regional office of the NLRB at (203) 722-2540.

With respect to the resignation by-law amendment, it is true that the membership had advance notice of the proposed change. Realizing the unpopularity of the measure, however, the union scheduled a vote on the amendment at an evening membership meeting knowing that many members, some of whom live more than 60 miles from work, would not return to vote. Thus, out of a total of 2100 members, 97 attended the meeting and voted on the amendment. As I indicated in my statement, on a matter as serious as this, the union should have conducted a mail ballot election or scheduled an election at the plant immediately following work. I believe union democracy would have been better served by providing these opportunities.

UAW RESPONSE

6. Price has alleged that the UAW promised to provide members of the MDA with "medical insurance" in order to induce them to affiliate with the UAW in 1982:

Fact: During the discussions on the affiliation of the MDA with the UAW, the UAW explained that one of the advantages of belonging to the UAW is that it has a strike fund and provides strike assistance benefits when members go out on strike. These strike benefits include temporary health insurance payments, in situations where an employer discontinues the employees' health insurance coverage during a strike. The UAW does not provide any health insurance benefits to its members in non-strike situations.

REPLY OF ROBERT PRICE

Correct Fact: The UAW does not refute my statement that one of its "selling points" during its affiliation campaign was the promise of free medical insurance during a strike. Thus, no reply to this response is necessary except to emphasize that the union's response in which it extols other advantages of UAW membership such as strike assistance benefits, reinforces my earlier description of the union as a "strike happy" organization. Rather than representing its members in a responsible manner through good faith negotiating efforts and resorting to a strike threat as a last resort, its bargaining agenda approaching the 1983 contract talks was exactly the opposite -- strike first, then negotiate. As a result, many innocent members who trusted their union leadership lost their jobs forever.

UAW RESPONSE

7. Finally, Price has complained that the UAW only represents the interests of a few employees, rather than the majority of the workers, and that it urged the employees to ratify the contract which was recently agreed to by the MDA-UAW Local Union and General Dynamics in August 1984 because of selfish institutional interests.

Fact: The UAW recommended that the employees accept the contract because it represented the only hope of ending a very difficult 14 month strike and getting some of the strikers back their jobs. Pursuant to the UAW Constitution, the contract was submitted to the membership of the MDA-UAW Local Union for their consideration, and a majority of the members voted to ratify the contract.

REPLY OF ROBERT PRICE

Correct Fact: This response is total pretextual nonsense. The UAW failed in returning all the strikers to their jobs as it promised. Only 160 of approximately 1100 striking members were guaranteed their jobs back as part of the strike settlement. Thus, it is clear that the union urged ratification not because some would get their jobs back, -- that should have been a reason to urge rejection since the rest of the membership was left stranded!! Instead, the UAW urged ratification of the contract to preserve its own survival so that, through its union security clause, it could perpetuate itself on a new complement of employees. The union doesn't care who it represents but only how many. Bodies are all that matter -- bodies who will pay dues.

In this case, the remaining workforce wants no part of the union. Instead of recognizing that fact and voluntarily disclaiming its representational rights, the unit employees are being forced to utilize NLRB procedures to rid ourselves of it.

HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

SAM GEJDENSON
SECOND DISTRICT
CONNECTICUT

July 14, 1982

Mr. Roy Colville
Marine Draftsmen's Association
P.O. Box 275
Groton, Connecticut 06340

Dear Roy:

Congratulations on your decision to have the Marine Draftsmen's Association affiliate with the United Auto Workers. In my experience the UAW has been one of the most well-informed and active unions as far as legislative and political issues are concerned. I believe that the MDA's affiliation with an international union such as the UAW will greatly enhance its ability to provide the best possible representation for its members.

I look forward to seeing you soon.

Sincerely,

Sam

SAM GEJDENSON
Member of Congress

ATTACHMENT

American Hotel & Motel Association
1819 L STREET, N.W. ★ SUITE 600 ★ WASHINGTON, DC 20036
(202) 223-6872

LAWRENCE T. GRAHAM
Deputy

ALBERT L. McDERMOTT
Washington Representative

CECILIA A. KIRBY
Assistant

October 30, 1984

The Honorable Don Nickles
Chairman
Senate Subcommittee on Labor
608 Senate Hart Office Building
Washington, DC 20510

Dear Mr. Chairman:

The American Hotel & Motel Association (AH&MA) wishes to lend its support to the Statements presented by the National Association of Orchestra Leaders before your Subcommittee on September 13th.

The American Hotel & Motel Association is a federation of hotel and motel associations located in the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, having a membership in excess of 8,500 hotels and motels accounting for over one million rentable rooms. Inclusive in our membership are all of the major hotel and motel chains.

S. 281 would essentially make hotels and motels "employers" of musicians. Because of the transient nature of the business - musicians are generally contracted with for short term periods - this would present the lodging establishment with onerous recordkeeping requirements.

We are concerned about S. 281. This bill would reverse long standing employment policies in the hotel/motel industry. If S. 281 were to become law, hotels and motels would become employers of all musicians in every instance and would be restricted to using Musician Union members or be subject to boycott.

NEW YORK OFFICE 888 SEVENTH AVENUE ★ NEW YORK, N.Y. 10019 ★ (212) 265-4506

In treating musicians as employees rather than independent contractors, the bookkeeping burden could prove overwhelming, especially for smaller properties. Hotels and motels would become responsible for all tax withholding, as well as liability coverage for "employees" that they may only see once for a brief period of time and never again.

Thank you, Mr. Chairman, for the opportunity to present the views of AH&MA on the proposed legislation.

Sincerely,

Albert L. McDermott

Albert L. McDermott
Washington Representative

ALM/vep

Senator **Nickles** We have attempted to present—in 2 quick days of hearings—an overview of the problems confronting organized labor today. These hearings were not designed to be complete or to set the basis for workable solutions—but only to lay before the public a few of the cases that have come to this committees attention. I sincerely hope that labor-management professionals will study this record and give this committee the benefit of their views.

We will adjourn the committee.

[Whereupon, at 11:28 a.m., the subcommittee was adjourned.]

○